RE_ Importance of setting up regulatory accounting in 2016.rtf

From: Veinot, Cindy (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]; Picard, Michel [mpicard@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Importance of setting up regulatory accounting in 2016
Date: Thursday, February 16, 2017 10:15:18

I'll be at FPC

Does 2 pm work for a call?

-----Original Message-----
From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February-16-17 8:06 AM
To: Picard, Michel; Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Subject: RE: Importance of setting up regulatory accounting in 2016

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

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 15, 2017 8:22 PM
To: Cindy.Veinot@ontario.ca; Nadine Petsche; Kim Marshall
Subject: Importance of setting up regulatory accounting in 2016

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

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Subject: RE: Importance of setting up regulatory accounting in 2016
Date: Thursday, February 16, 2017 09:05:46
Attachment 1: IESO Position Paper v2 DRAFT.PDF

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IESO Position Paper v2 DRAFT.PDF

IESO Position Paper

Market Account Transactions

The purpose of this position paper is to document the analysis, rationale and conclusions reached by the IESO in preparing its annual audited financial statements (also referred to as the Corporate Accounts) as it relates to the accounting for market account transactions.

In the IESO's 2015 audited financial statements, the third paragraph of its revenue recognition policies states that "These financial statements do not include the financial transactions of market participants within the IESO-administered markets". The effect of this policy is that transactions between market participants (excluding IESO and former OPA system fees, market sanctions, and Smart Metering Entity fees) are excluded from both the statement of operations and the statement of financial position. This is a policy and position that was adopted by IESO at market inception when it reported its financial statements under what is now referred to as Part V of the CPA Canada Handbook and was maintained when IESO adopted Public Sector Accounting Standards ("PSAB") in 2011.

Prior to the adoption of PSAB in 2011, IESO concluded that it was not party to the market account transactions and that these should not be recorded in the Corporate Accounts. The primary basis for this conclusion was that IESO acted as an agent in accordance with the guidance in CICA Handbook Section 1000, para .21 and EIC-123: Reporting Revenue gross as a principal versus net as an agent. (see attached report prepared by PriceWaterhouseCoopers ("PWC Report").

While the accounting literature referred to in the PWC report provided the basis for IESO's conclusion under its previous accounting framework, the report did not necessarily address the accounting for asset and liability balances in the market accounts at period end, more specifically at December 31.

Description of Market Transactions

The market rules provide a framework for the operation of the market and the determination of charges payable or receivable from market participants or market program participants. IESO's role, as per Ontario Regulation 288/14 includes, amongst other matters, is to:

- Operate the IESO-administered markets to promote the purposes of this Act [Electricity Act, 1998]
- Engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under the Act or the Ontario Energy Board Act, 1998

Transactions settled through market accounts generally include physical energy transactions, transmission services, legislated charges and settlements, and global adjustment.

The framework established by the market rules creates a type of clearing house or trust whereby IESO performs the function of a facilitator for the efficient settling of transactions between market participants, rather than market participants settling transactions directly with each other. IESO is not an agent to these transactions as it has no role in promoting the interests of one party over another party, is not specifically engaged as an agent on behalf of any party, and does not have an economic interest in the ultimate consummation of any transaction. By IESO's own definition, it is the independent administrator of the market.

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IESO collects and recognizes as revenue, amongst other things, system fees and Smart Metering Entity Charges. These fees are not in relation to transactions within the market (i.e., not a commission or fee). While it is recognized that system fees are generally calculated based on electricity drawn from the IESO-controlled grid, the system fees are not a commission. The calculation method used is merely a reasonable mechanism to allocate the cost of IESO operations to the ultimate consumer of electricity (as the IESO system fees are charged to Local Distribution Companies who in turn recover that cost through their OEB approved distribution fees). A fee based on electricity transactions could be replaced with a different measure such as customer numbers, as is the case with the Smart Metering Entity charge. Furthermore, IESO has no economic interest as an agent, as it operates on a not-for-profit basis, with any excess of system fees collected over allowable expenses is rebated to market participants.

Furthermore, IESO's market rules contain terms that specify IESO's relationship to market participants and its exposure to financial risks within the market accounts. Specifically,

Chapter 9, Section 6.9.2 "The IESO shall not be a counter-party to any trade transacted through the real-time markets[1]." In this term, "trade" is not specifically defined, but is meant to be generic to refer to all transactions between market participants that are facilitated by the IESO.

Chapter 9, Section 6.16.2 "Subject to the provisions of section 6.14, IESO shall not be liable to make payments in excess of the amount it receives for transactions in the real-time markets."

Section 6.14 address remedies of default of a market participant. In summary, the IESO has recovery mechanisms for a default of payment by a market participant, and if those recoveries cannot be made by the specific defaulting market participant, then the creditors owed funds from the real-time market will be paid on a pro-rata basis.

The above items from the market rules demonstrate that IESO has no financial position on the market account transactions as it has **no** [emphasis intended] risk or reward based on the transactions.

While the transactions, assets, and liabilities of the market accounts are not legally in the form of trust[2], their activities are akin to a trust, whereby there is not beneficial or equitable right that IESO has to the assets (in substance, where the IESO is trustee and the market participants are the beneficiaries).

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[1] Chapter 11 of the Market Rules defines real-time market as "any one of the markets operated by the IESO for energy, operating reserve pursuant to Chapter 7"

[2] Black's Law Dictionary defines a trust as "An equitable or beneficial right or title to land or other property, held for the beneficiary of another person, in whom resides the legal title or ownership, …"

Application of PSAB Principles

In PSAB's financial statement concepts, PSAB 1000.29(a), the reliability of financial information is achieved through, amongst other things, Representational faithfulness, which "… is achieved when transactions and events affecting the entity are presented in financial statements in a manner that is in agreement with the actual underlying transactions and events. Thus, transactions and events are accounted for and presented in a manner that conveys their substance rather than necessarily their legal or other form. The substance of transactions and events may not always be consistent with that apparent from their legal or other form."

PSAB does not specifically address the accounting for market account transactions or the period end balances described in the introduction to this report.

For inflows and outflows of cash, PSAB does address the matter of an agent relationship in PSAB 3510 Tax Revenue, whereby it states in paragraph .14 that "Amounts collected as an agent of the government or other third parties will not give rise to an increase in net assets or revenue of the agent. Thus, except as provided in paragraph PS 3510.12, tax revenue arises only for the government that imposes the tax and not for other entities, such as a tax agency, or another government that collects a tax on behalf of the government imposing the tax." By analogy, IESO views the inflows and outflows of cash in the market accounts being performed on behalf of other entities, and thus should not be recording those inflows and outflows in the statement of financial position.

However, PSAB does not address directly or by analogy the period end balances. As such, we look to the definition of assets and liabilities within PSAB.

PSAB 1000.35 defines Assets as "…economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained". Furthermore, it states that Assets have three essential characteristics:

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;	At period end, there are typically two types of assets – i) amounts due from market participants (typically physical market transactions), and ii) other variance type accounts or regulatory type assets (i.e., RPP differences, Global Adjustment Mechanism) It is arguable that the amounts due from market participants for physical market transactions will result in a "cash inflow" as cash will be received in the market bank account. However, that cash inflow is not to the IESO Corporation, but an inflow to be used to settle market transactions between market participants. At a period end, there typically would only be a receivable/payable on these transactions, as the receipts are collected during the following month and payables paid shortly thereafter in the same

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	month. Other amounts in the market accounts may result in cash inflows to market accounts or may result in lower cash payments to generators and other MPs in the future (depending on the differences between RPP rates, generator cost guarantees, HOEP, etc.). Similar to above, these inflows or reduced outflows do not flow to IESO Corporation and IESO has no legal right or practical ability to utilize the assets for corporate purposes. The only use of these assets is to settle market transactions with MPs.
(b) the public sector entity can control the economic resource and access to the future economic benefits; and	IESO does not control the assets as it cannot direct their use nor are there any future economic benefits to the corporation to be realized. This is clear with respect to amounts due from market participants as when these cash flows are received [generally from LDCs] during a particular month, they are, for the most part, flowed out to the receiving market participants [generally generators and transmitters]. For other amounts in the market accounts such as cash the question of control is less clear. While it recognized that the cash is in a bank account and IESO may make investment decisions, the market rules determine how and when the cash will be flowed to market participants. The one element of control IESO has over these balances is to settle transactions with MPs.
(c) the transaction or event giving rise to the public sector entity's control has already occurred.	While the transaction has occurred, it is arguably a transaction between market participants and not one where the IESO is a counterparty to the transaction.

Conversely, PSAB 1000.44 defines liabilities as "…present obligations of a government to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits."

Furthermore, it states that Liabilities have three essential characteristics:

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(a) they embody a duty or responsibility to others, leaving a government little or no discretion to avoid settlement of the obligation;	The IESO market rules require the IESO to settle the transactions between MPs. The Corporation has no duty or responsibility to settle. There exists an obligation to settle amounts amongst market participants, but it is not the Corporation's duty or responsibility to do so. IESO facilitates this settlement with assets from other market participants.
(b) the duty or responsibility to others entails settlement by future transfer or use of assets, provision of goods or services, or other form of economic settlement at a specified or determinable date, on occurrence of a specified event, or on demand; and	MP transactions doe require settlement and IESO is responsible for settling. Having said that, it settles these with amounts collected from other MPs.
(c) the transactions or events obligating the government have already occurred.	As noted above in the asset characteristics, occurring transactions are between market participants and not the IESO.

Conclusion:

There is diversity of practice on the accounting for MP transactions amongst other ISOs in North America. There appears to be consensus that ISOs are not economically exposed to MP transactions (note that detailed analysis has not been performed on the relationships between those ISOs and their market rules and market participants) and as such the revenues and expenses of the market accounts are not included in the statement of operations. PSAB, along with other accounting frameworks are generally silent on statement of financial position requirements. In agency relationships, typically amounts received by and held by the "agent" are recorded and presented as assets (whether in general or segregated accounts) with an equal an offsetting liability recorded to the other principal counter party. Where there is diversity of practice is what amounts, if any reside at year end on the statement of financial position. Arguments can be made and reasonable conclusions can be reached for recording all, some or no market account transactions on year-end financial position.

Based on the analysis of the market transactions vis-à-vis the Corporation's relationship to them, the substance of those transactions and the analysis of the characteristics of assets and liabilities, as defined by PSAB, IESO's conclusion that transactions of the market accounts, including period end balances, should not be recorded in the Corporate Accounts has been appropriate. However, with changes to facts, circumstances, transaction types, alternate views may be appropriate.

DRAFT

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Azim, Ani (TBS)

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RE_ Interim invoice.rtf

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To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Interim invoice
Date: Monday, March 19, 2018 09:25:09

Hi Shyrose,

It depends if there are additional work requested by the OPCD.

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

LinkedIn

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, March 19, 2018 8:33 AM
To: Picard, Michel <mpicard@kpmg.ca>

Subject: RE: Interim invoice

Thanks Michel

Is there any more invoice coming for the period Mar 15th to Mar 31st?

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 16, 2018 3:34 PM
To: Virani, Shyrose (TBS)
Cc: Donaldson, Mark (TBS)
Subject: Interim invoice

Hi Shyrose,

Please find enclosed our interim invoice for RFS # TBS – OTB – OPCD-21.

Have a great weekend!

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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RE_ Interim invoice.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Interim invoice
Date: Monday, March 19, 2018 08:32:44

Thanks Michel

Is there any more invoice coming for the period Mar 15th to Mar 31st?

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 16, 2018 3:34 PM
To: Virani, Shyrose (TBS)
Cc: Donaldson, Mark (TBS)
Subject: Interim invoice

Hi Shyrose,

Please find enclosed our interim invoice for RFS # TBS – OTB – OPCD-21.

Have a great weekend!

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ Invitation for a training.rtf

From: Patel, Bharat (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]; arjunbhatt@kpmg.ca [arjunbhatt@kpmg.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: RE: Invitation for a training
Date: Tuesday, April 10, 2018 11:40:37

Thank you Michel for inviting on IFRS training.

I would like to participate on Monday, June 4, 2018 – GTA, KPMG office, 100 New Park Place #1400, Vaughan, ON L4K 0J3, location.

Arjun,

Please register my name for Vaughn location (Jun 4th).

Thanks,

Bharat

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: April-09-18 1:17 PM
To: Picard, Michel
Cc: Bhatt, Arjun; Travers, Kevin M; Klemenchuk, Frank L; deGuzman, Sarah C; Jeffreys, Ian J; Ouellette, Lois A; Betik, Matthew; Gunn, Sheldon; Swift, Cynthia A; Brownridge, David; Sison, Mary
Subject: Invitation for a training

All,

We would like to invite you and your colleagues to a complimentary training session. To reduce your travel time, three sessions will take place:

Dates:

Monday, June 4, 2018 – GTA, KPMG office, 100 New Park Place #1400, Vaughan, ON L4K 0J3

Tuesday, June 19, 2018 – Burlington, Convention Centre, 1120 Burloak Drive, Burlington, ON L7L 6P8

Friday, June 22, 2018 – London, Stoneridge Inn, 6675 Burtwistle Lane, London, ON N6L 1H5

Timing:

8:30-9:00: Continental breakfast

9:00-13:00: Training session

13:00-14:00: Lunch

Topics:

IFRS 15, Revenue

IFRS 16, Leases

IAS 7, Statement of cash flows

Tax and regulatory matters

Update on the IASB project on rate regulation

Cyber security

Data & Analytics

Please confirm your attendance (and the location) by sending an email to Arjun Bhatt (arjunbhatt@kpmg.ca), our training coordinator, and myself, no later than April 30, 2018.

Should you have any questions, please do not hesitate to contact us.

Best regards,

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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RE_ Invoice for Services Rendered Enclosed.rtf

From: Virani, Shyrose (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: RE: Invoice for Services Rendered Enclosed
Date: Friday, July 07, 2017 10:04:39
Attachment 1: image001.gif
Attachment 2: image002.jpg

Hi Suzie:

Sorry for the late response but I just got a word from our payment centre that they have mailed you a cheque yesterday

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: June 26, 2017 10:52 PM
To: Virani, Shyrose (TBS)
Subject: FW: Invoice for Services Rendered Enclosed

Hi Shyrose:

We sent the attached invoice in mid-May and our year end is June 30th so we were really hoping to collect by then. Is it possible to get a status on this invoice and try to get it paid by end of week?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 |
carolyn.roberts@ca.ey.com

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From: Carolyn Roberts
Sent: Wednesday, May 17, 2017 2:00 PM
To: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Cc: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: Invoice for Services Rendered Enclosed

Please find attached our invoice for services provided under PO OSS 227152. If you need any further information, please do not hesitate to contact us. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

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RE_ Invoice for Services Rendered Enclosed.rtf

From: Carolyn Roberts [carolyn.roberts@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: RE: Invoice for Services Rendered Enclosed
Date: Wednesday, May 17, 2017 14:04:33
Attachment 1: image001.jpg
Attachment 2: image002.jpg

I would like to clarify that the time incurred on the invoice includes time up to and including May 12, 2017. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

EY/Comm: 3025243

Website: http://www.ey.com

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From: Carolyn Roberts
Sent: Wednesday, May 17, 2017 2:00 PM
To: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Cc: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Suzie Gignac <suzie.r.gignac@ca.ey.com>

Subject: Invoice for Services Rendered Enclosed

Please find attached our invoice for services provided under PO OSS 227152. If you need any further information, please do not hesitate to contact us. Thank you.

Best regards,

--

Carolyn Roberts | Executive Coordinator

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RE_ invoice.rtf

From: Donaldson, Mark (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: invoice
Date: Friday, December 08, 2017 15:19:03
Attachment 1: image001.gif

Hi Suzie,

Yes, I think so. I will consult with Shyrose and see what we can action on this.

Mark

Sent with BlackBerry Work
(www.blackberry.com)

From: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Date: Friday, Dec 08, 2017, 10:57 AM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: FW: invoice

Hi Mark:

Shyrose makes a good point below. The contract ends December 31. Should we be looking to extend it for six months to get through the rest of the memo and the other accounting issue we are considering at the moment?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Friday, December 8, 2017 10:53 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: invoice

Hi Suzie

Would you be able to let me know the amount that you are billing me? I am forecasting my budget and I would like to know that amount, also would you be planning to send me any more invoices, since this contract is ending on December 30th?

Thanks

Shyrose

From: Donaldson, Mark (TBS)
Sent: December 8, 2017 10:29 AM
To: Suzie Gignac
Cc: Jeannie Kaminski; Virani, Shyrose (TBS)
Subject: RE: invoice

Hi Suzie,

Yes, that would be fine.

Thanks.

Mark

Sent with BlackBerry Work
(www.blackberry.com)

From: Suzie Gignac <suzie.r.gignac@ca.ey.com>

Date: Friday, Dec 08, 2017, 10:22 AM

To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>

Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>

Subject: invoice

Hi Mark:

We are preparing our invoice through mid-November and wanted to know who we should send it to? It used to go to Nadine. Should we send it to you now?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

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RE_ invoice.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: invoice
Date: Friday, December 08, 2017 11:58:12
Attachment 1: image001.gif

Hi Shyrose:

This invoice will be through to November 18th and I am guessing it will be approx. $25K plus HST but we are just pulling it together now. There will be another invoice through to December 31 as we continue to work on a couple of issues for OPCD.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Friday, December 8, 2017 10:53 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: FW: invoice

Hi Suzie

Would you be able to let me know the amount that you are billing me? I am forecasting my budget and I would like to know that amount, also would you be planning to send me any more invoices, since this contract is ending on December 30th?

Thanks

Shyrose

From: Donaldson, Mark (TBS)
Sent: December 8, 2017 10:29 AM
To: Suzie Gignac
Cc: Jeannie Kaminski; Virani, Shyrose (TBS)
Subject: RE: invoice

Hi Suzie,

Yes, that would be fine.

Thanks.

Mark

Sent with BlackBerry Work
(www.blackberry.com)

From: Suzie Gignac <suzie.r.gignac@ca.ey.com>

Date: Friday, Dec 08, 2017, 10:22 AM

To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>

Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>

Subject: invoice

Hi Mark:

We are preparing our invoice through mid-November and wanted to know who we should send it to? It used to go to Nadine. Should we send it to you now?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

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RE_ invoice.rtf

From: Donaldson, Mark (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
CC: Jeannie Kaminski [Jeannie.Kaminski@ca.ey.com]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: invoice
Date: Friday, December 08, 2017 11:29:07
Attachment 1: image001.gif

Hi Suzie,

Yes, that would be fine.

Thanks.

Mark

Sent with BlackBerry Work
(www.blackberry.com)

From: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Date: Friday, Dec 08, 2017, 10:22 AM
To: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Cc: Jeannie Kaminski <Jeannie.Kaminski@ca.ey.com>
Subject: invoice

Hi Mark:

We are preparing our invoice through mid-November and wanted to know who we should send it to? It used to go to Nadine. Should we send it to you now?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

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image001.pdf

RE_ Invoices.rtf

From: Virani, Shyrose (TBS) []
To: Carolyn Roberts [carolyn.roberts@ca.ey.com]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Uros Karadzic [uros.karadzic@ca.ey.com]
Subject: RE: Invoices
Date: Tuesday, March 07, 2017 15:54:37
Attachment 1: image001.jpg

Hi Carolyn

You can send me the invoice on March 31st

Thanks

shyrose

From: Carolyn Roberts [mailto:carolyn.roberts@ca.ey.com]
Sent: March 2, 2017 12:27 PM
To: Virani, Shyrose (TBS)
Cc: Suzie Gignac; Uros Karadzic
Subject: RE: Invoices

For the complex accounting code, we continue to work with the Province on accounting issues so I suspect there will be another invoice before the end of March. Can you let me know the latest date you will need to receive the March invoice by to meet your year-end invoice cut off? Billing can also occur for the actuarial services at that time if this works at your end.

Uros, the PO is OSS 227152.

Shyrose, please advise if these arrangements are satisfactory for your deadlines. Thanks.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Office: 1-613-598-4844 | Fax: 1-613-232-5324 | carolyn.roberts@ca.ey.com

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From: Carolyn Roberts [carolyn.roberts@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Uros Karadzic [uros.karadzic@ca.ey.com]
Subject: RE: Invoices
Date: Thursday, March 02, 2017 13:26:34
Attachment 1: image003.jpg

For the complex accounting code, we continue to work with the Province on accounting issues so I suspect there will be another invoice before the end of March. Can you let me know the latest date you will need to receive the March invoice by to meet your year-end invoice cut off? Billing can also occur for the actuarial services at that time if this works at your end.

Uros, the PO is OSS 227152.

Shyrose, please advise if these arrangements are satisfactory for your deadlines. Thanks.

Best regards,

--

Carolyn Roberts | Executive Coordinator

Ernst & Young LLP

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RE_ Joint AcSB_PSAB RRA study.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Joint AcSB/PSAB RRA study
Date: Wednesday, February 15, 2017 08:49:14

I will call you this morning, I have a research report that states that public and private sectors should be allowed to use regulatory accounting. It goes on to say that it should only be allowed for GBEs in the public sector. It is not authoritative. This beg the question as to why IESO is not a GBE!

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, February 15, 2017 5:49 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: Joint AcSB/PSAB RRA study

Ok. I'll find what I have, but I don't know if I have the complete doc. N

Original Message
From: Picard, Michel
Sent: Tuesday, February 14, 2017 10:35 PM
To: Petsche, Nadine (TBS)
Subject: Re: Joint AcSB/PSAB RRA study

Nadine,

Not sure what this study is?

Sent from my iPhone

> On Feb 14, 2017, at 18:52, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:
>
>
> Hi Michel.
> Cindy was asking for a copy of the doc. Wondering if you might have access to the softcopy? N

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Re_ Joint AcSB_PSAB RRA study.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Re: Joint AcSB/PSAB RRA study
Date: Tuesday, February 14, 2017 23:34:56

Nadine,

Not sure what this study is?

Sent from my iPhone

> On Feb 14, 2017, at 18:52, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:
>
>
> Hi Michel.
> Cindy was asking for a copy of the doc. Wondering if you might have access to the softcopy? N

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RE_ just wondering.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: just wondering
Date: Wednesday, February 15, 2017 17:36:07

IESO's market rules contain terms that specify IESO's relationship to market participants and its exposure to financial risks within the market accounts. Specifically,

Chapter 9, Section 6.9.2 "The IESO shall not be a ter-party to any trade transacted through the real- time markets1." In this term, "trade" is not specifically defined, but is meant to be generic to refer to all transactions between market participants that are facilitated by the IESO.

Chapter 9, Section 6.16.2 "Subject to the provisions of section 6.14, IESO shall not be liable to make payments in excess of the amount it receives for transactions in the real-time markets."

Section 6.14 address remedies of default of a market participant. In summary, the IESO has recovery mechanisms for a default payment by a market participant, and if those recoveries cannot be made by the specific defaulting market participant, then the creditors owed funds from the real-time market will be paid on a pro-rata basis.

The above items from the market rules demonstrate that IESO has no financial position on the market account transactions as it has no [emphasis intended] risk or reward based on the transactions.

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Wednesday, February 15, 2017 4:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall <Kim.Marshall@ieso.ca>; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Subject: RE: just wondering

I was thinking about whether there was an obligation on the part of IESO

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February-15-17 2:02 PM
To: Kim Marshall; Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS)
Subject: RE: just wondering

I do not see what the benefits are for IESO.

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Wednesday, February 15, 2017 2:01 PM
To: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Picard, Michel <mpicard@kpmg.ca>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: just wondering

I think this is a stretch but we can talk about it

Kimberly Marshall | VP, Corporate Services & CFO

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

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

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

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

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

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: February 15, 2017 11:33 AM
To: Picard, Michel (mpicard@kpmg.ca); Kim Marshall
Cc: Veinot, Cindy (TBS)
Subject: just wondering

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Hi Kim and Michel.

Cindy was just wondering if a case might be made for the generator agreements to be capital leases on IESO's books? This was just a thought, and without the benefit of more detailed background info on the nature of the agreements. Perhaps if they were leases, and an argument could be made for a different amortization period, there may be another solution to spreading the billing of related costs?

We'll look forward to your response.

Nadine

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RE_ just wondering.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: just wondering
Date: Wednesday, February 15, 2017 15:00:45

I think this is a stretch but we can talk about it

Kimberly Marshall | VP, Corporate Services & CFO

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

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

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: February 15, 2017 11:33 AM
To: Picard, Michel (mpicard@kpmg.ca); Kim Marshall
Cc: Veinot, Cindy (TBS)
Subject: just wondering

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Hi Kim and Michel.

Cindy was just wondering if a case might be made for the generator agreements to be capital leases on IESO's books? This was just a thought, and without the benefit of more detailed background info on the nature of the agreements. Perhaps if they were leases, and an argument could be made for a different amortization period, there may be another solution to spreading the billing of related costs?

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RE_ Legal and Accounting Call.rtf

From: Nelms, Scott (MOF) []
To: Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; John Lee - Ontario Power Generation (john.s.lee@opg.com) [john.s.lee@opg.com]; Waddell, Colleen (MOF) [Colleen.Waddell@ontario.ca]; Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Judy Wilson [JUDY.WILSON@blakes.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; 'CROZZOLI Carlo -CBUSDEV&STRT' [carlo.crozzoli@opg.com]
Subject: RE: Legal and Accounting Call
Date: Monday, March 06, 2017 10:34:37

Hi all,

Thanks again for your time on Friday.

As per our conversation, could each organization please send on a list of key day to day contacts that can interface with lawyers? I would suggest either one point of contact with back-ups, or if relevant, specific subject matter experts. We will combine the list and send it back around.

Again thank you,

Scott

From: Nelms, Scott (MOF)
Sent: March 3, 2017 2:59 PM
To: Hume, Steen (ENERGY); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Picard, Michel; Kim Marshall; Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); John Lee - Ontario Power Generation (john.s.lee@opg.com); Waddell, Colleen (MOF); Montgomery, Kaitlin (MOF)
Cc: Hosick, Sarah (TBS); Cox, Hilary (ENERGY); Judy Wilson; Christie, Tim (ENERGY); 'CROZZOLI Carlo -CBUSDEV&STRT'
Subject: Legal and Accounting Call

Hi All,

As discussed on the call, please see the attached documents from IESO, OPG and Treasury Board.

Thanks,

Scott

Scott Nelms

Electricity Investment and Governance Secretariat | Ministry of Finance

7th Floor | 375 University ave. | Toronto, ON

w: (416) 212-6469 | c: (647) 330-2681

scott.nelms@ontario.ca

RE_ Legal and Accounting Call.rtf

From: Nelms, Scott (MOF) []
To: Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; John Lee - Ontario Power Generation (john.s.lee@opg.com) [john.s.lee@opg.com]; Waddell, Colleen (MOF) [Colleen.Waddell@ontario.ca]; Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Judy Wilson [JUDY.WILSON@blakes.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; 'CROZZOLI Carlo -CBUSDEV&STRT' [carlo.crozzoli@opg.com]
Subject: RE: Legal and Accounting Call
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Cc: Hosick, Sarah (TBS); Cox, Hilary (ENERGY); Judy Wilson; Christie, Tim (ENERGY); 'CROZZOLI Carlo -CBUSDEV&STRT'
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scott.nelms@ontario.ca

RE_ Legislative Drafting Call Requested Friday March 3.rtf

From: Waddell, Colleen (MOF) []
To: Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]
CC: Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Judy Wilson [JUDY.WILSON@blakes.com]
Subject: RE: Legislative Drafting Call Requested Friday March 3
Date: Friday, March 03, 2017 09:29:37

Good morning Everyone,

I am **confirming** that this call will take place today at 1:30 pm.

Conference Call Number:

416-212-8013 or LD 1-866-633-1033

PC 4075747#

Thank you all

Colleen

From: Waddell, Colleen (MOF)
Sent: March 2, 2017 6:28 PM
To: Hume, Steen (ENERGY); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Picard, Michel; Kim Marshall; Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba,

Jennifer (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
Subject: Legislative Drafting Call Requested Friday March 3

Hello Everyone,

Sorry that this email is coming late this evening. I understand we need to get this phone call booked for tomorrow - can you please let me know if 1:30 pm works.

I will be placing a hold in your calendars.

Thank you

Colleen

Re_ Legislative Drafting Call Requested Friday March 3.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]
CC: Waddell, Colleen (MOF) [Colleen.Waddell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Legislative Drafting Call Requested Friday March 3
Date: Friday, March 03, 2017 01:48:43

Works for me

Sent from my iPhone

> On Mar 2, 2017, at 19:28, Shear, Dan (ENERGY) <Dan.Shear@ontario.ca> wrote:
>
> Works for me. Thanks!
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Waddell, Colleen (MOF)
> Sent: Thursday, March 2, 2017 6:27 PM
> To: Hume, Steen (ENERGY); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Picard, Michel; Kim Marshall; Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI)
> Cc: Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
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Re_ Legislative Drafting Call Requested Friday March 3.rtf

From: Shear, Dan (ENERGY) []
To: Waddell, Colleen (MOF) [Colleen.Waddell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]
CC: Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Legislative Drafting Call Requested Friday March 3
Date: Thursday, March 02, 2017 20:27:53

Works for me. Thanks!

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Waddell, Colleen (MOF)
Sent: Thursday, March 2, 2017 6:27 PM
To: Hume, Steen (ENERGY); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Picard, Michel; Kim Marshall; Shear, Dan (ENERGY); Rehob, James (ENERGY); Kacaba, Jennifer (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Cox, Hilary (ENERGY); Hosick, Sarah (TBS)
Subject: Legislative Drafting Call Requested Friday March 3

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Thank you

Colleen

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From: Picard, Michel [mpicard@kpmg.ca]
To: Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]
CC: Waddell, Colleen (MOF) [Colleen.Waddell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Re: Legislative Drafting Call Requested Friday March 3
Date: Friday, March 03, 2017 01:48:43

Works for me

Sent from my iPhone

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RE_ legislative drafting.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]
Subject: RE: legislative drafting
Date: Monday, February 27, 2017 15:06:22

Ok thx for the heads up

Kimberly Marshall | VP, Corporate Services & CFO

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

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

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

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

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: February 27, 2017 2:01 PM
To: Picard, Michel (mpicard@kpmg.ca); Kim Marshall
Cc: Veinot, Cindy (TBS); Nelms, Scott (ENERGY)
Subject: FW: legislative drafting
Importance: High

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Michel/Kim,

Please be aware that Energy's legal team may reach out for your advice.

Nadine

From: Nelms, Scott (ENERGY)

Sent: Monday, February 27, 2017 1:42 PM

To: Petsche, Nadine (TBS)

Cc: Veinot, Cindy (TBS)

Subject: legislative drafting

Hi Nadine,

I am getting questions from Energy lawyers on what is needed to meet accounting requirements as drafting proceeds. They are getting the OPG perspective, but would like to cross check with OPCD to ensure this aligns with the Province's views. I wonder if you or someone from your team involved in this initiative could spare a few minutes. Tons going on, but legal drafting is probably now on the critical path.

Thanks,

Scott

Scott Nelms

Electricity Investment and Governance Secretariat | Ministry of Finance

7th Floor | 375 University ave. | Toronto, ON

w: (416) 212-6469 | c: (647) 330-2681

scott.nelms@ontario.ca

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RE_ letter attached.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: letter attached
Date: Friday, October 21, 2016 16:18:40

Thanks Shyrose.

We would be interested in a debriefing.

Regards,

Michel

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Friday, October 21, 2016 3:49 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: letter attached

<< File: Scanned from a Xerox multifunction device.pdf >>

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browser.

Re_ Meeting tomorrow.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Re: Meeting tomorrow
Date: Monday, April 25, 2016 15:24:29

Hi Michel. It is a meeting with the OAG so it will be at the AG's office, same as last time. Shyrose will send the details as a reminder. N

From: Picard, Michel
Sent: Monday, April 25, 2016 2:50 PM
To: Petsche, Nadine (TBS)
Subject: FW: Meeting tomorrow

Hi Nadine,

What the address and floor?

Merci,

Michel

From: Picard, Michel
Sent: Monday, April 25, 2016 2:48 PM
To: Susan Klein <Susan.Klein@auditor.on.ca>
Subject: RE: Meeting tomorrow

See you there. I presume your number is on the door.

From: Susan Klein [mailto:Susan.Klein@auditor.on.ca]
Sent: Monday, April 25, 2016 12:00 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Meeting tomorrow

That's fine Michel. As it's early, please just ring the bell (beside the elevators) when you get here or call my number, and I will let you in.

Best,

Susan

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Monday, April 25, 2016 11:21 AM
To: Susan Klein
Subject: Meeting tomorrow

Hi Susan,

Can I attend the meeting tomorrow in person rather than over the phone?

Best regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

T 416 777 8414

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(forward), copy, or disclose its contents.

RE_ my comments on the TPA.rtf

From: Samir.Chhelavda@HydroOne.com [Samir.Chhelavda@HydroOne.com]
To: mpicard@kpmg.ca [mpicard@kpmg.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: my comments on the TPA
Date: Wednesday, March 22, 2017 16:53:33

Michel – I fully agree with your comments, especially the comments relating to the additions in section 5.1.

Thx,

Samir

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Wednesday, March 22, 2017 4:02 PM
To: Petsche, Nadine (TBS); CHHELAVDA Samir
Subject: my comments on the TPA

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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RE_ Nav Canada.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Nav Canada
Date: Sunday, February 26, 2017 22:39:35

Would be interesting to find out why NavCan isn't consolidated in the Federal PA. n

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February-26-17 9:14 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall
Subject: Nav Canada

I sent a note to Sandy. Will forward as soon as I get an answer.

I enclosed 3 set of FS:

- NAV - note 1
- Power Commission – notes 1 and 2 F
- GVT of Canada – note 12 – The list does not include NAV.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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RE_ noticed.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: noticed
Date: Thursday, March 23, 2017 09:13:04

Trustees cannot do the work themselves.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 9:10 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: noticed

Michel,

I had thought that the language has change to reflect expectations, but just noticed these terms being used in the delegations annex. I think I have to flag to Stephen?

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

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

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Re_ noticed.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: noticed
Date: Thursday, March 23, 2017 09:15:49

Ok. I ended up not raising this item with Blakes for the same reason. N

From: Picard, Michel
Sent: Thursday, March 23, 2017 9:13 AM
To: Petsche, Nadine (TBS)
Subject: RE: noticed

Trustees cannot do the work themselves.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 9:10 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: noticed

Michel,

I had thought that the language has change to reflect expectations, but just noticed these terms being used in the delegations annex. I think I have to flag to Stephen?

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

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RE_ OAG ref to IESO acctg.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: OAG ref to IESO acctg
Date: Thursday, April 13, 2017 16:46:53

That is not true. When an entity uses the hierarchy provided by any framework (US, IFRS, ASPE, PSAS) to adopt a policy because its framework is silent, it does not mean that it has adopted the framework.

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, April 13, 2017 3:48 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: OAG ref to IESO acctg

Hi Michel. We met with the OAG today and they happened to mention that IESO's f/s are now reflecting US GAAP. I wonder, in light of the adoption of IFRS for OPG and H1, wondering if there might be a potential concern with that messaging? N

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RE_ OAG Request_ Fair Hydro Billing Costs.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Carolyn Roberts [carolyn.roberts@ca.ey.com]
Subject: RE: OAG Request: Fair Hydro Billing Costs
Date: Thursday, September 07, 2017 13:20:01
Attachment 1: image001.gif

Hi Sarah:

Based on my estimates, under our contract with OPCD total consulting costs up to the end of July related to FHP were approx. $69,700 plus tax.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: Wednesday, September 06, 2017 9:04 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: OAG Request: Fair Hydro Billing Costs

Hi Suzie,

Nadine Petsche has suggested I reach out to you. The Office of the Auditor General has requested all consulting costs and contracts associated with the Fair Hydro Plan across government. While I have the statement of work with the max costs for the work EY has done for OPCD, the SoW includes other items than just Fair Hydro.

Are you able to provide an estimate as to how much EY has billed OPCD for work on the Fair Hydro Plan specifically?

Happy to discuss.

Thanks,

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

416-212-8512

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image001.pdf

RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]; Saulnier, Brett [bsaulnier@torys.com]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 17:58:21
Attachment 1: image0d0a3f.JPG
Attachment 2: Proposed Alternative for Fair Allocation Calculation v2.docx
Attachment 3: Blackline -Fair Allocation Provisions - Proposed Alternative.pdf

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All,

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

<u>Major Issues</u>

1. It is critically important to have a definition of “transfer” that is broad enough. We

had a mark-up as did Stikemans. I prefer ours but the two are not really that far apart. I would suggest a call with Ashbourne, Hamilton and Feldman tonight or tomorrow to get consensus.

2. Section 6.1. The process for determining the rate for electricity under 6.1xx may not be workable or requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for every specified consumer, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, what authority do they have to determine these rates given prohibition under s. 78(2) of the OEB Act?

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

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

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

6. Section 13(2) gives the Minister the ability to replace the Financial Services

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

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

8. In s. 16(5) the draft Bill still proposes to treat the Financing Plan as a confidential document. We believe that unless the Minister allows for disclosure of the Financing Plan we will not be able to satisfy disclosure obligations under securities laws.

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

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

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

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

Minor Points

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

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

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

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

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

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

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

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

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http://www.torys.com/

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-26-17 12:39 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>;

Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>
Subject: RE: Ontario Fair Hydro Plan

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

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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

Subject: RE: Ontario Fair Hydro Plan

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

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

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

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

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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

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

Jennifer

Jennifer J. Kacaba

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

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

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

In your review, please focus on the broad stroke concepts, rather than the minutia, and

keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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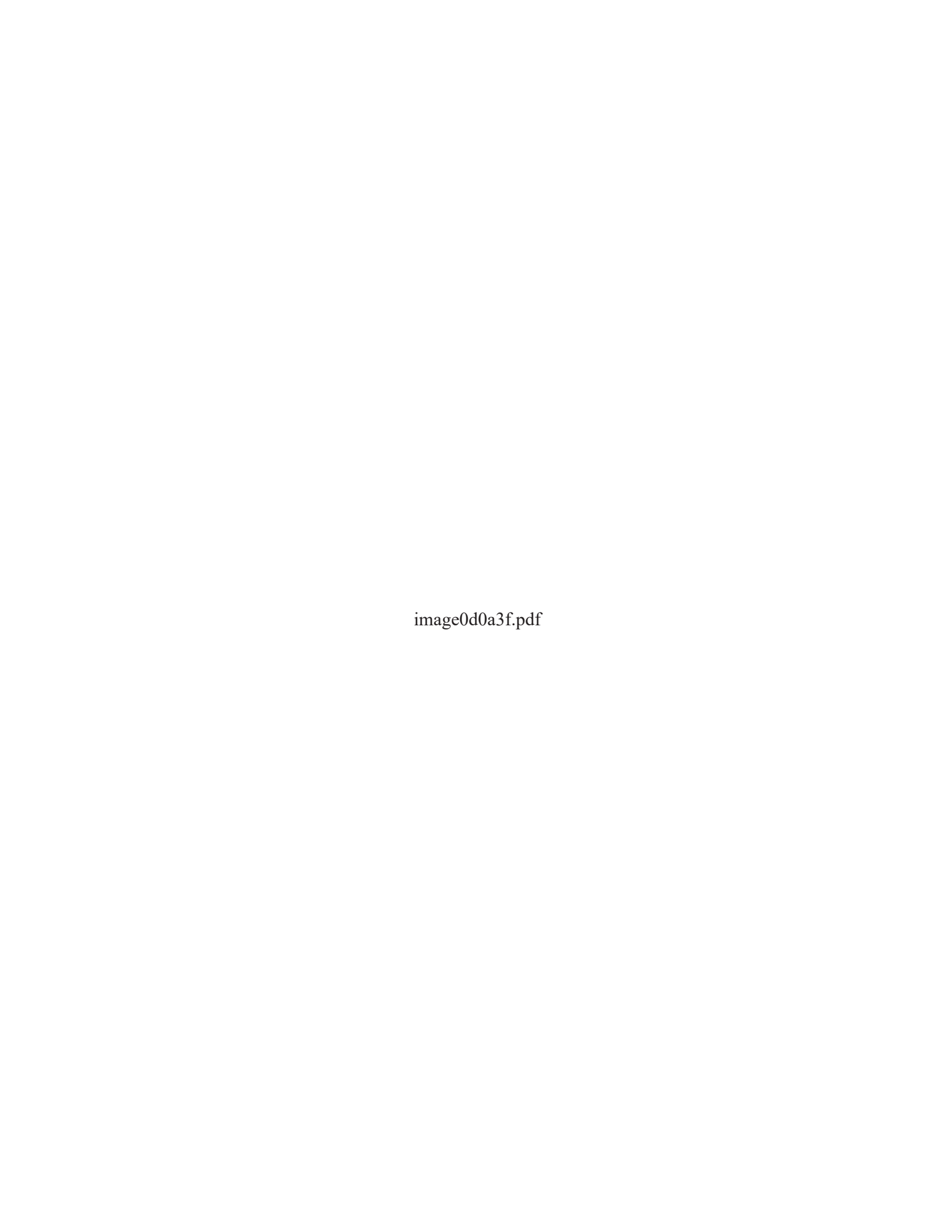
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Proposed Alternative for Fair Allocation Calculation v2.pdf

FAIR ALLOCATION AMOUNT

Minister to prepare initial calculation of fair allocation amount

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

Timing of initial calculation

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

Certification

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

Financial Services Manager to update calculation

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

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

Access to information

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

Amount

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

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

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

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

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

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

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

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

4. Such other principles as may be prescribed.

Method

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

Provision of updates to Minister

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

Effective date

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

Publication

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

Blackline -Fair Allocation Provisions - Proposed Alternative.pdf

FAIR ALLOCATION AMOUNT

~~Financial Services Manager to calculate~~Minister to prepare initial calculation of fair allocation amount

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

Timing of initial calculation

(1.1) The ~~Financial Services Manager~~Minister shall calculate a fair allocation amount in respect of each reference period ~~before any funding obligation is incurred [by a financing entity during the reference period]~~by the date that is **[20]** business days after the day this Act receives Royal Asset.

Certification

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

Financial Services Manager to update calculation

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

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

Access to information

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

Amount

(~~1.2~~1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

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

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

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

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

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

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

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

4. Such other principles as may be prescribed.

Method

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

~~Notification~~Provision of updates to Minister

(4) The Financial Services Manager shall ~~notify~~provide the Minister ~~of the methods used to calculate~~written notification of any updates to the calculation the fair allocation amount ~~and any changes to those methods~~made pursuant to subsection (1.3).

Effective date

(~~6~~5) The fair allocation calculation or an amendment ~~to~~ the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided ~~to the Minister in writing~~by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

Document comparison by Workshare Compare on Wednesday, April 26, 2017 5:47:46 PM

Input:	
Document 1 ID	file://\\Catou-ogfspuwss\217803$\G\Les Wong's Documents\Fair Hydro Plan\Legislation\Excerpt - Fair Allocation Section of April 26 Draft Legislation.docx
Description	Excerpt - Fair Allocation Section of April 26 Draft Legislation
Document 2 ID	file://\\Catou-ogfspuwss\217803$\G\Les Wong's Documents\Fair Hydro Plan\Legislation\Proposed Alternative for Fair Allocation Calculation v2.docx
Description	Proposed Alternative for Fair Allocation Calculation v2
Rendering set	Standard

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

Statistics:	
	Count
Insertions	30
Deletions	13
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	45

RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hill, Krista [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; Mansoori, Nina [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; Emes, Aaron [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Myers, Jonathan [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:10:08
Attachment 1: image9b9365.JPG
Attachment 2: New Sections.DOCX

All,

In case it is helpful for this afternoon's meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

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

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view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

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I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the

investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

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Sent: April-15-17 10:06 PM
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Subject: Ontario Fair Hydro Plan

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

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

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

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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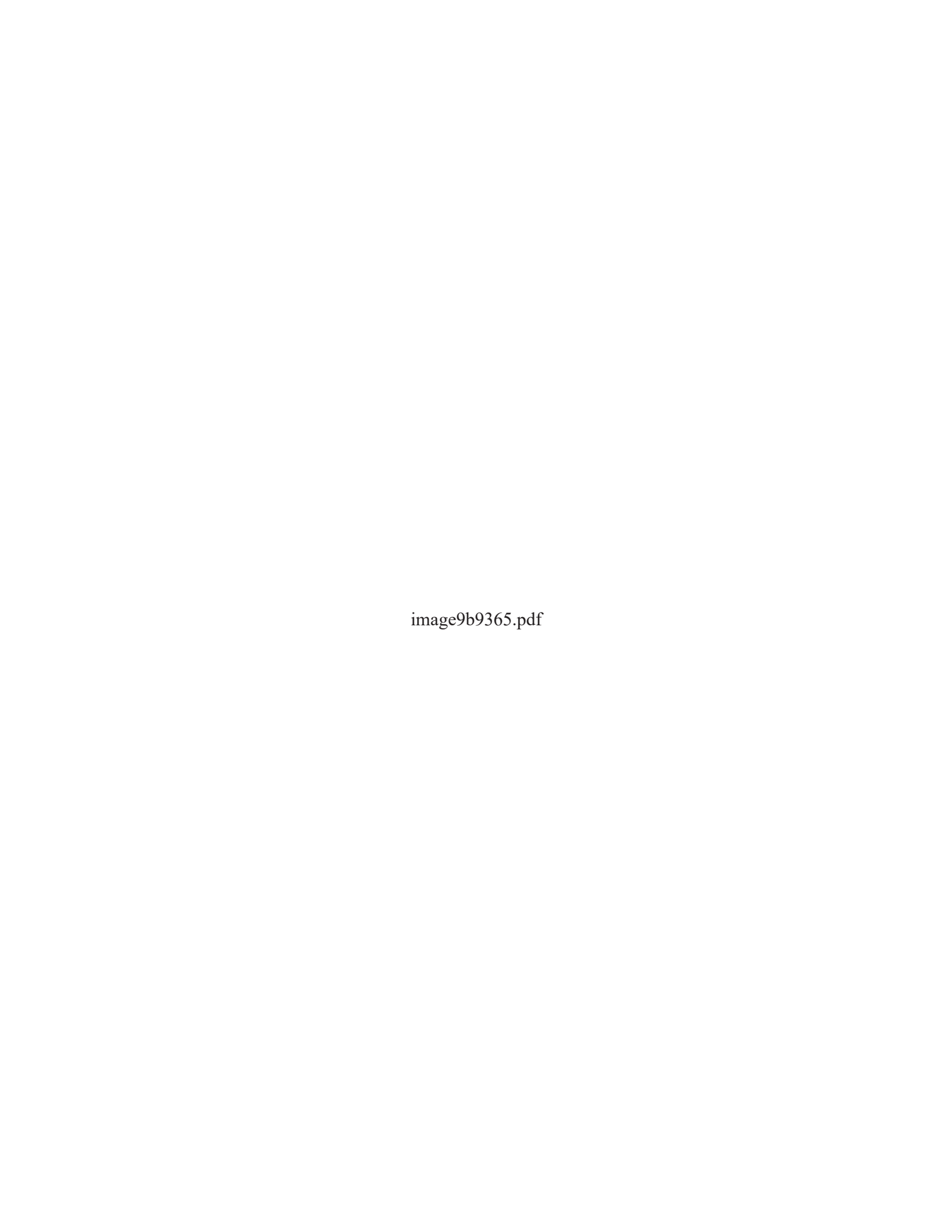
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TORYS
LLP

New Sections.pdf

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 10:39:40
Attachment 1: image5ddddd.JPG

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8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and

ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG’s perspective.

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Subject: Ontario Fair Hydro Plan

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

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

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

Carolyn Calwell

Legal Director

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TORYS
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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 17:52:44
Attachment 1: image002.gif
Attachment 2: image003.gif
Attachment 3: image004.jpg
Attachment 4: image005.jpg
Attachment 5: Compare - Fair Hydro Act - Osler comments.pdf
Attachment 6: Fair Hydro Act (April 23 2017) [Osler comments].docx

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Please find enclosed Osler's comments on the draft legislation, also blacklined to v. 3. This remains subject to further review and comment by the Dealers.

We have done a preliminary review of the mark-ups from Torys/OPG and Stikeman/IESO, and are largely in agreement with their comments. However, we would note the following in respect of the Torys mark-up (which we have not yet had an opportunity to discuss with Torys):

(1) Torys proposed revision to add a new section (1.4) to new section 53.1 of the Electricity Act is problematic as drafted. If it is necessary to be included, we would like to see it limited to recording the assets and liabilities for accounting purposes and requiring a note on the balance sheet indicating that the assets are held in trust and not available to OPG's creditors; and

(2) we are concerned that the deemed trust language they added in 11xx(4) and 12xx(4) would not be enforceable on insolvency and that we would strongly prefer that true trusts be established.

Elliot

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Subject: RE: Ontario Fair Hydro Plan

Please note that we will be circulating some additional comments on behalf of the Dealers later today or first thing tomorrow morning. We have reviewed the comments from Torys and we are generally in agreement with them.

Regards, Rocco

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Subject: RE: Ontario Fair Hydro Plan

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

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Subject: RE: Ontario Fair Hydro Plan

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

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

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

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

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

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Subject: RE: Ontario Fair Hydro Plan

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

Jennifer

Jennifer J. Kacaba

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
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Subject: Ontario Fair Hydro Plan

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

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

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

Carolyn Calwell

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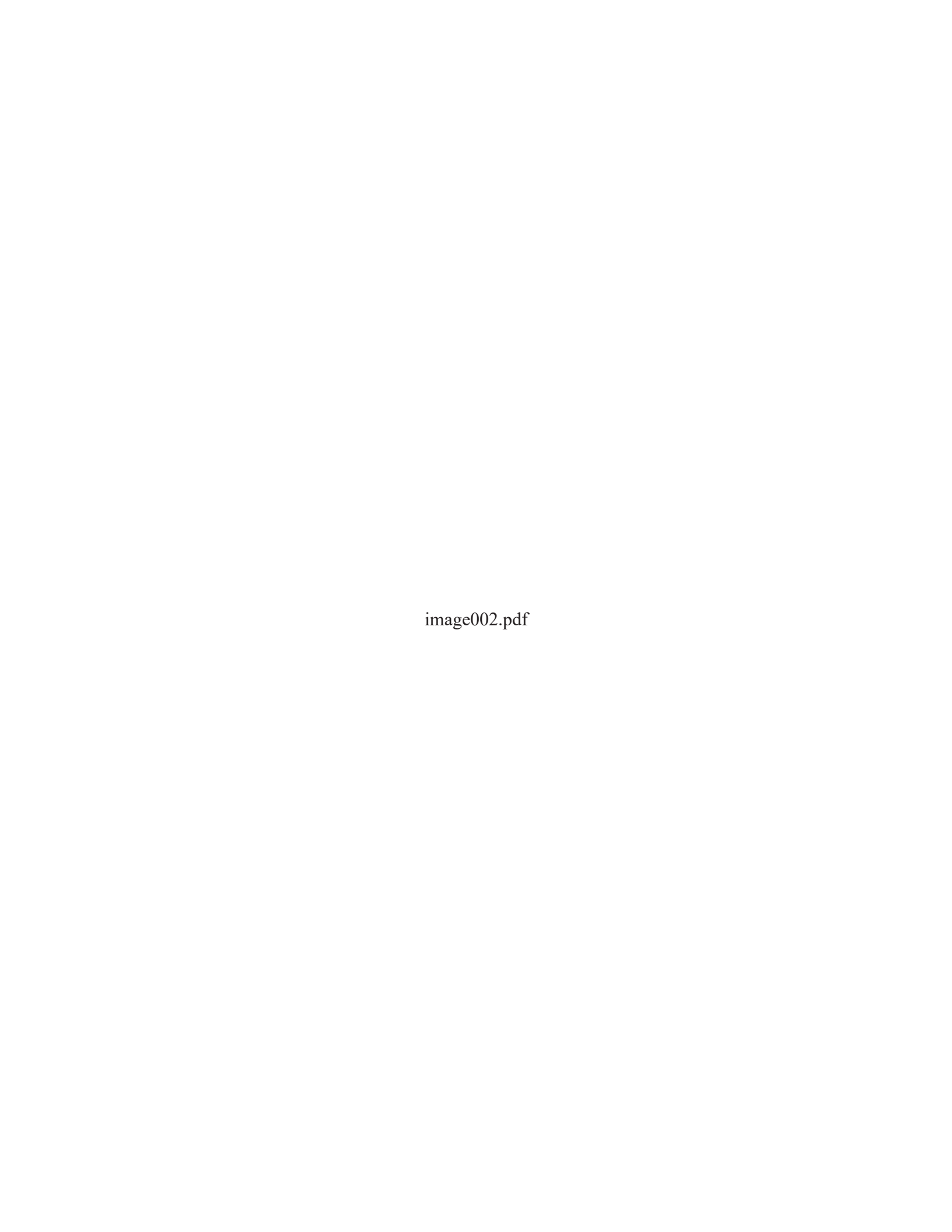
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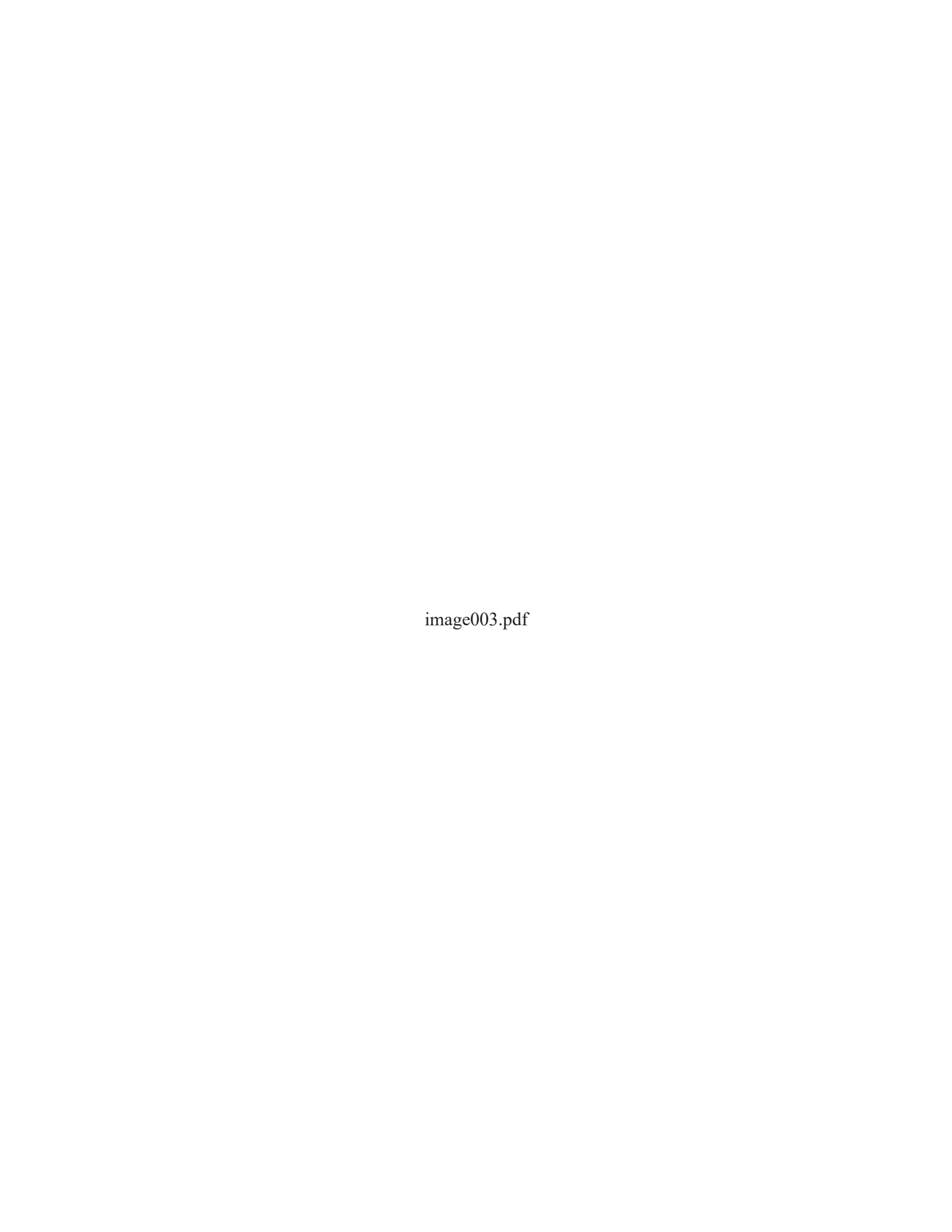
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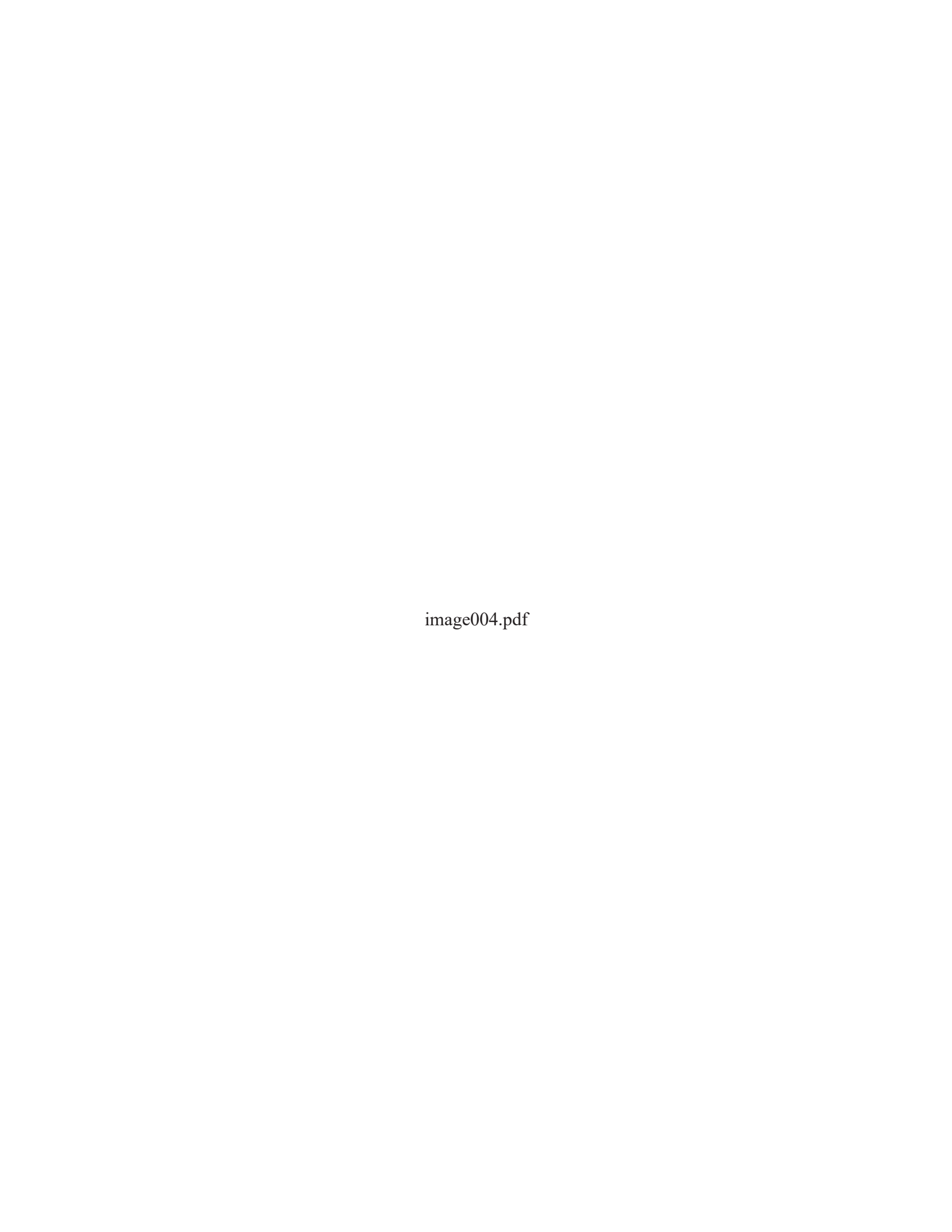
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~~**Version 3**~~
April 23, 2017 Osler Mark-up of Ver. 3

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

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative[**, including as a result of past, present and expected future incurrences of clean energy costs**][**[NTD: What does this mean?]**]; ("French")

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

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

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

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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

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

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

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

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

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

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

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

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x; ("French"). **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

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

"IESO funding shortfall" means, in respect of a ~~reference period~~calendar month, the amount determined under section 20xx for the ~~reference period~~calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

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

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

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

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

"reference period" means,

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

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be ~~set out in the Fair Allocation Plan~~prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

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

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

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

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

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

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

   i. a dwelling,

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

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

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

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

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

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

iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

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

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

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a ~~named~~specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

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

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers over time ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation~~; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

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

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

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment ~~over other debts; or~~in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

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

Agreements ~~for compensation~~

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

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

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is ~~25~~**[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Irrevocability of clean energy adjustment

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

Exception

~~(2) Subsection (1) does not apply to the extent that there is a calculation error~~**[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the ~~electricity vendor.~~OEB.]**

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

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

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

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

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

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors ~~[~~in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, ~~1998]~~1998*, or as may be prescribed.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those a~~cc~~mounts:

1. Amounts described in subsection 12 (~~4~~5).

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

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~.~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

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

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer ~~for the consumer's amount~~ of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers ~~[in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]~~.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act~~:~~, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the ~~electricity vendor~~IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

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

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

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

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

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

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

1. Any incurrence of a funding obligation should reasonably align the ~~expected~~estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

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

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

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the ~~expected~~estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

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

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

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

Confidentiality of plan

(~~4~~5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) ~~The Financial Services Manager shall incur funding~~Funding obligations shall be incurred and ~~make~~ transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section ~~[paramountcy of funding obligations]~~17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~4).

Financing entities

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

Prohibition

(~~3~~4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

~~Effect of amendment to Fair Allocation Plan~~Financing Plan compliance

(~~4~~5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize~~authorizing the IESO to~~ do the following~~:

1. ~~Create~~Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation]. **[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in, or any obligations in respect of~~, the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred ~~to~~ a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

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

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

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

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

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

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

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

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

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

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

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

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

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way

of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]. [NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds ~~that are deposited in~~collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person ~~who~~, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to**

be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan ~~or in relation to the establishment of the Fair Allocation Plan~~.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

~~**References in marketing materials and offering documents**~~

~~**36xx.** No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.~~

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(~~b~~d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[7] Note - see s. 51 of the Electricity Act, 1998

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to

facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a

subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Fair Hydro Act (April 23 2017) [Osler comments].pdf

April 23, 2017 Osler Mark-up of Ver. 3

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

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.][NTD: Agreed. Consider splitting this into a defined term for the rate/charge and a defined term for the global amount.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative**[, including as a result of past, present and expected future incurrences of clean energy costs][NTD: What does this mean?]**; ("French")

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

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

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

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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

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

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

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

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

"cumulative IESO funding shortfall" means, at any point in time, the sum of all prior IESO funding shortfalls minus any consideration received by the IESO from the sale of regulatory assets;

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"estimated finance amount" means the amount calculated pursuant to the regulations;

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"fair allocation" means ●;

"fair allocation amount" means the amount calculated pursuant to section 15xx;

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French") **[NTD: Consider a bifurcation of the FSM duties into (i) preparation and update of the Financing Plan and (ii) administration of the investment asset. See s. 14xx.]**

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

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

"financing entity" means ●;

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x; ("French") **[NTD: This revision is required because the fair allocation amount (per s. 15xx) cannot include IESO's "funding obligations".]**

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

"IESO funding shortfall" means, in respect of a calendar month, the amount determined under section 20xx for the calendar month; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French") **[NTD: Should this reference any person to whom the investment interest is transferred to pursuant to section 26xx or reference a secured party who acquires an investment asset as a result of enforcement? See note to 22xx(3).]**

"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

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

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

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

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

"reference period" means,

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

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be prescribed, in any event ending no later than April 30, 2047; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

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

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"regulatory asset owner" means ●;

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French") **[NTD: Move to regs.]**

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity**[, receives an invoice in respect of the account][NTD: Why is this limitation required?]** and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French") **[NTD: Move to regs.]**

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Move to regs.]**

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria: **[NTD: Move to regs.]**

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

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

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

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

    i. a dwelling,

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

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

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

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

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts: **[NTD: Move to regs.]**

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

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

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts: **[NTD: Move to regs.]**

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity. **[NTD: What about service charges for the delivery of electricity, etc.? Also, why is this worded slightly differently than in OREC?]**

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

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

   ii. A charge labelled as a "specific service charge" or "retail service charge". **[NTD: What is intended here?]**

   iii. A rate rider. **[NTD: What is intended here? LDCs have lots of rate riders on their tariff sheets, most of which are legitimate costs tied to the supply of electricity.]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer, **[NTD: Move to regs. This only works if all "specified consumers" fall into the residential rate class; otherwise, non-residential consumers will get residential rates.]**

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a specified person becoming the owner of an investment interest. **[NTD: Consider moving to s. 22xx]**

Effect of invalidity, etc.[5]

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

Same, funding obligation

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

Purpose

3xx. (1) The purposes of this Act are,[6]

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

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment in relation to other charges or amounts used by specified consumers in connection with the supply of electricity;

(c) adversely affect any rights of the IESO or other party to transfer the regulatory asset or the consequences of any such transfer; or

(d) adversely affect the regulatory asset, an investment asset or a funding obligation.

Clarification with respect to regulations

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

Agreements

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of or in relation to this Act, including agreements regarding financial commitments, financial arrangements, guarantees, indemnities or similar transactions, including entering into agreements guaranteeing that if the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it comes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018 [NTD: Minister's release post-OEB RPP announcement suggests a start date later than May 1.]

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly electricity invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average commodity rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: Consider the application of this clause in light of the April 20 rate cut announced by the OEB.]**

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

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the commodity rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly electricity invoice amount that is **[25][NTD: Consider implications of the April 20 rate cut announced by the OEB.]** per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the commodity rate payable by each sub-meter customer is the commodity rate determined under subsection (2).

Determining commodity rate

(4) The commodity rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

[NTD: Consider whether it is necessary to override any Section 78 order, retailer agreement, or s. 79.16 of the Act (since it remains) in the same way language of s. 79.16 (beginning) does.]

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a commodity rate higher than the applicable commodity rate receives the difference between the commodity rate shown on their invoice and the applicable commodity rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations. **[NTD: (1) See comment above regarding May 1 start date, and (2) LDCs have to change commodity rate now every six months. What would prompt the need for this?]**

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the commodity rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: What about including interest on funding obligations in the Fair Adjustment in this period, or in the prescribed commodity rate? (See Section 16xx(4)(b) which seems to permit some funding obligations in the charging of CEAs during the first 5 years as long as the funding obligations are under the total fair allocation).]**

PART III
CLEAN ENERGY ADJUSTMENT

[NTD: Consider inserting the provisions re how it's calculated here.]

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may

be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Irrevocability of clean energy adjustment

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

Exception

[NTD: The LDCs should not calculate the clean energy adjustment. The mechanics should, like the fair adjustment, be a non-discretionary calculation done by the OEB.]

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

[Note: Here the clean energy adjustment is a large amount, not a rate.]

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

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

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

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

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

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion to be collected from specified consumers in accordance with section 12xx(2), as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: Is the remittance notice in addition to, or separate from, the IESO's settlement processes?]**

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*, or as may be prescribed.

Collection account

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

1. Amounts described in subsection 12 (5).

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

3. Payments collected by the IESO pursuant to subsection 11 (2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3), and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be received and held by the IESO in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust. **[NTD: This Act or the PPSA? To confirm.]**

IESO to remit

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

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers to reduce any outstanding IESO funding shortfall.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer of the clean energy adjustment in accordance with the regulations. **[NTD: The clean energy adjustment should be a charge.]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers.

Pro rating of payments

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

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

Held in trust

(4) All of the following amounts received by an electricity vendor and all proceeds of any such amounts shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be received and held by each electricity vendor in trust for the benefit of the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act, and for greater certainty any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust **[NTD: Or the PPSA?]**:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Payments received from or on behalf of specified consumers under subsection 12xx(2).

4. Portions of payments received from or on behalf of specified consumers under subsection 12xx(3).

5. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the IESO shall take such steps as the regulations may prescribe. **[NTD: Is this the intent? Otherwise this clause as drafted makes no sense.]**

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may **[NTD: See also s. 17xx]** administer the investment asset on behalf of the investment asset owners.

Same

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

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

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

For clarity, a person other than the Financial Services Manager may administer the investment asset on behalf of the investment asset owners.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

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

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act]. **[NTD: We do not understand what this clause is intended to do. In addition, there should not be references to global adjustment as the allocation also includes energy costs (e.g. if global adjustment goes negative).]**

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: Unclear.]**

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

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

1. Any incurrence of a funding obligation should reasonably align the estimated finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period. **[NTD: This is already built into the calculation of the fair allocation amount in s. 15xx(1.1)(2).]**

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

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

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the estimated finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

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

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

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

Confidentiality of plan

(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) Funding obligations shall be incurred and transfers shall be made in material conformity with the applicable Financing Plan. **[NTD: Revised to accommodate the comment on the definition of FSM about bifurcating the role.]**

Same

(2) For greater certainty, section 17xx(5) applies despite the failure of the Financial Services Manager to comply with subsection (4).

Financing entities

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

Prohibition

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

Financing Plan compliance

(5) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to:

1. Establish a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations. **[NTD: Accounting orders don't allow for recovery. They are normally cleared via a rate order (after application).]**

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the amount of the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity to be used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers. **[NTD: Why would it be based on an estimate?]**

Recording of IESO funding shortfall

(3) IESO shall record the cumulative IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall, including any adjustment or transfer, in the variance account is determinative of the amount of cumulative IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the cumulative IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the cumulative IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect any of the cumulative IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the cumulative IESO funding shortfall shall be established by the Board, having regard to the amount of the cumulative IESO funding shortfall from time to time and the [fair allocation calculation].**[NTD: See Section 15xx "Fair Allocation Amount".]**

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer of the regulatory asset,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; for clarity, the IESO funding shortfall shall not include any investment asset interest; and

(b) the IESO shall have no further right, title or interest in, or any obligations in respect of the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest. **[NTD: This subsection and the definition imply that the investment asset owner will always be a financing entity (which may or may not be created pursuant to subsection 17xx(3)). The financing entity and any trustee will be Ontario entities, so the various provisions related to the perfection of security interests etc. (e.g. in section 28xx) should work; however, if it is contemplated that the investment asset could be transferred to a non-Ontario entity pursuant to section 27xx or as a result of enforcement, further transfers may be subject to another jurisdiction's laws and another jurisdiction's laws related to the granting and perfection of security interests may apply. Conflict of laws rules will then apply.]**

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication: **[NTD: See Torys comments from the prior draft.]**

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

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

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

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

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or licensed distributor;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or **[NTD: This provision is likely unenforceable given federal paramountcy in respect of bankruptcy and insolvency law and the claims released thereunder. See, e.g., 407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)]**

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

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

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

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan. **[NTD: See note to 22xx(3)]**

Validity of transfer

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

under the applicable investment interest in accordance with the terms of the transfer. **[NTD: See note to 22xx(3)]**

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person **[to secure a funding obligation]**. **[NTD: Consider whether this restriction is desirable if an investment asset owner is to be anyone other than a financing entity.]**

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms. **[NTD: See subsection (3) – Why both this Act and the PPSA?]**

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted. **[NTD: There are super-priority liens that could have priority over this security interest under federal insolvency laws; also consider whether subsection (3) and this subsection (5) are inconsistent, since the PPSA provisions incorporated under (3) would include the priority provisions.]**

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in any amounts, revenues or other proceeds collected by the IESO in trust, including amounts that are deposited in the account to be created pursuant to subsection 11xx(3), any amounts, revenues or other proceeds collected by electricity vendors in trust pursuant to subsection 12xx(4) and any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person, including where such person may have commingled such amounts, revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*. **[NTD: This section appears to be referring solely to agents appointed under section 29xx. Consider whether the Financial Services Manager, IESO, any financing entity and any others should be expressly listed.]**

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, if such person or entity defaults on any required remittance of the clean energy adjustment, collections or remittances or fails, or indicates any intention to cease, to hold any such amounts, collections or remittances or proceeds thereof in trust and in segregated accounts as required by this Act.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order. **[NTD: The order will be likely be stayed on an insolvency and if the money has been spent rather than commingled, a sequestration order will not result in the recovery of the funds.]**

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest. **[NTD: What about the PPSA?] [NTD: See note to 22xx(3)]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged

neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

[NTD: Need to be able to disclose this without restriction to market the debt.]

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act…

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(d) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

(e) **[in respect of a financing entity.]**

[Note: reg-making powers to be dealt with in subsequent draft]**[NTD: This should be as broad as possible.]**

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

[7] Note - see s. 51 of the Electricity Act, 1998

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

[NTD: Is the plan to also amend the compliance/enforcement provisions of the OEB Act to bring breaches of this Act within the purview of the Board's enforcements powers?]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

[NTD: This section should be moved to the regulations. The calculations below will require careful review once the financing structure is finalized, so it is premature to include them in the legislation.]

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:15:17
Attachment 1: WSComparison__6714670_1-_6712834_3.pdf
Attachment 2: SETOR1-#6712834-v3-April_20_17_draft_FHP_from_Ministry.docx

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Please see attached the IESO/Stikemans comments.

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Subject: RE: Ontario Fair Hydro Plan

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

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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Subject: RE: Ontario Fair Hydro Plan

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

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

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

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

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Kacaba, Jennifer (ENERGY)
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Subject: RE: Ontario Fair Hydro Plan

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

Jennifer

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
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Subject: Ontario Fair Hydro Plan

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

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

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

Carolyn Calwell

Legal Director

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Version 4

STIKEMAN COMMENTS/EDITS – APRIL 26/17

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

Confidential Draft

A proposal to create Legislation.

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

A proposal to create Legislation.

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

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

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Preamble

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

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

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

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

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

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

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

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

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

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

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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

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

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

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

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

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

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

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

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

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

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

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

"funding obligation" means,

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

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

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

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

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

"investment asset" means the rights and interests described in section ~~22~~24xx; ("French")

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

"investment interest" means,

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

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

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

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

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

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

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

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

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

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"reference period" means,

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

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

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

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

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

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

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

"specified consumer" means,

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

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

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

"transfer" means [TBD]; ("French")

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

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

Specified consumers

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

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

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

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

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

    i. a dwelling,

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

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

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

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

Invoice amount

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

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

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

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

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

v. Any other amounts as may be prescribed.

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

Same, exclusions

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

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

2. Penalties or interest.

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

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

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

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

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

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

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

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Same, funding obligation

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

Purpose

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

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

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

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

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

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act,

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

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including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

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

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

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

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

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

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

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

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

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

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

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

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

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a

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specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

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

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

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

Implementation of rates

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

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Effective date

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

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

2. July 1, 2017.

Transition

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

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

2. Technical or operational reasons.

Same

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

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

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

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

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Sub-meter customers

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

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges~~.~~]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was ~~inconsistent~~consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(~~4~~3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's ~~respective~~ interest in the investment asset.

Same

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

Recovery from sub-meter consumers

(~~6~~5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

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Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

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

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

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

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

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

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

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

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

Financial Services Manager to notify Board

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

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Board to determine rates

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

IESO to receive amounts

11xx. (~~2~~1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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

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

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

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

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean

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energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

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

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

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

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

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

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Same

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

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

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

3. Such other matters as may be prescribed.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

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

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

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

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

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

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Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

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

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

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

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

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

Method

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

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

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

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

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

Principles

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

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

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

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

Limitation, first five year period

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

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

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

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allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

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

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

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

Same

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

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

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

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power

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Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

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

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

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

Same

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

Variance account to be established, maintained

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

Recording in variance account

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

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

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

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

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Rights of investment interest owner

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

Regulatory asset established

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

Limitation

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

Board to set rates

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

Same, limitations

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

Transfer of regulatory asset

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

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

~~**Same**~~

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

[NTD: suggest moving to s 24xx(2)]

Validity of transfer

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

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Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1)** ~~The first~~**Each transfer of** ~~the~~**a regulatory asset or a portion of it either creates** ~~the~~**or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

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

Investment asset established

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

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

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

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any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

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

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

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

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

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

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

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

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

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

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

Exercise of rights

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

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Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

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Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

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Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts ~~paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under]~~, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017* ~~and any related amounts; and~~; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d) ~~amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

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(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

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205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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Version 4

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A proposal to create Legislation.

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

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A proposal to create Legislation.

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

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

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Preamble

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

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

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

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

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

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

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

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

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

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

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

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(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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

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

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

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

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

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

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

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

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

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

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

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

"funding obligation" means,

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

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

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

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

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

"investment asset" means the rights and interests described in section 24xx; ("French")

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

"investment interest" means,

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

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

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

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

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

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

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

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

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

"reference period" means,

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

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

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

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

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

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

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

"specified consumer" means,

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

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

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

"transfer" means [TBD]; ("French")

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

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

Specified consumers

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

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

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

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

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

    i. a dwelling,

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

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

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

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

Invoice amount

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

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

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i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

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

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

v. Any other amounts as may be prescribed.

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

Same, exclusions

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

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

2. Penalties or interest.

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

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

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

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

iii. A rate rider [of the prescribed type or class].

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5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

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

Same, funding obligation

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

Purpose

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

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

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

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

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

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

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

Clarification with respect to regulations

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

Agreements for compensation

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

Guarantee, indemnification

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

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

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

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

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

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

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

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

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

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

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

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

Specified RPP consumer, first fair adjustment

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

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

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

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

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

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Implementation of rates

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

Effective date

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

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

2. July 1, 2017.

Transition

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

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

2. Technical or operational reasons.

Same

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

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

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

Subsequent fair adjustments

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

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2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

Sub-meter customers

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

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

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Recovery from sub-meter consumers

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

Irrevocability of amount

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

Exception

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

Determination of clean energy adjustment
Financial Services Manager to determine

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

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

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

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

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

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

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

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

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Financial Services Manager to notify Board

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

Board to determine rates

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

IESO to receive amounts

11xx. (1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

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

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

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

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

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

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Electricity vendor to report

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

Electricity vendor to collect

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

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

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

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

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

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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Duties and powers

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

Same

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

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

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

3. Such other matters as may be prescribed.

Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

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

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

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

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

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

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

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

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

Method

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

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

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

Plan to be provided to Minister

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

Principles

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

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

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

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

Limitation, first five year period

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

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

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

Other reports

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

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(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

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

Same

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

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

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Financing entities

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

Prohibition

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

Effect of amendment to fair allocation amount

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

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

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

Same

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

Variance account to be established, maintained

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

Recording in variance account

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

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

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

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

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

Regulatory asset established

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

Limitation

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

Board to set rates

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

Same, limitations

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

Transfer of regulatory asset

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

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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[NTD: suggest moving to s 24xx(2)]

Validity of transfer

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

Same

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

Deemed perfection, etc.

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

Priority of transfer

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

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1) Each transfer of a regulatory asset or a portion of it either creates or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

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

Investment asset established

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

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

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

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

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

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

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

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

Not affected by failure to impose etc. clean energy adjustment

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

No set off, etc.

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

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

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

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

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Exercise of rights

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

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the

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investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

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Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017*; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d)

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

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ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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RE_ Ontario Fair Hydro Plan.rtf

From: Peter Hamilton [PHamilton@stikeman.com]
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Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 09:46:11
Attachment 1: SETOR1-#6712816-v4-Fair_Hydro_Act.docx
Attachment 2: WSComparison__6712834_1-_6712816_4.pdf

Please see attached the IESO/Stikemans mark-up, together with a black line to the last version circulated by the Ministry.

This draft is still being reviewed by KPMG and is subject to their comments especially around the requirements to be met in order to recognize and de-recognize the regulatory asset.

While not reflected in our mark-up, we think that Part III with respect to the billing and collection of the Clean Energy Adjustment would benefit from a reorganization. First, it might be moved later in the statute, after both Part V with respect to the Regulatory Asset and Part VI with respect to the Investment Asset. Its current placement suggests that it is relevant to both the regulatory asset and the investment asset , which is not the case. Second it might be internally reorganized so that it deals sequentially with the following subjects:

1. Determination of the amount of the Clean Energy Adjustment, which in our view should be done by the Financial Services Manager (currently in Sections 10(1) and 10(3).

2. Determination by the OEB of the rate necessary to recover the Clean Energy Adjustment (currently in Section 10(2)). It is not clear to us that there is a role for the IESO in between the OEB and the electricity vendors, but happy to discuss.

3. Obligation of electricity vendors to invoice (Section 12)

4. Obligation of consumers to pay invoice amount (Section 8)

5. Obligation of electricity vendors to collect and remit (Section 12(2) to 12(6)). We need to provide for the collection standard and in particular make clear that they do not guarantee collection from customers.

6. Obligation of IESO to collect and remit (Sections 11(2) to 11(5). We need to provide for the collection standard and in particular make clear that we do not guarantee performance by the electricity vendors.

Peter

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Subject: RE: Ontario Fair Hydro Plan

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

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

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

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

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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Sent: April 17, 2017 12:00 PM
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Subject: RE: Ontario Fair Hydro Plan

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

Jennifer

Jennifer J. Kacaba

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our

thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

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

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

Carolyn Calwell

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SETOR1-#6712816-v4-Fair_Hydro_Act.pdf

Version 3 [IESO comments]

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

Confidential Draft

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

---

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

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

(a) the estimated amounts to be paid by the IESO referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to, **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]**

a. procurement contracts for:

a. renewable energy generation or capacity,

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b. conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. energy efficiency,

d. natural gas generation and capacity, excluding such contracts as may be prescribed, or [**NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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

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

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

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

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

"electricity vendor"[4] means a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

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

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

"funding obligation" means a payment obligation incurred by or on behalf of an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

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

"IESO funding shortfall" means the amount determined under section 20xx; ("French")
[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, and, in the case of a transfer of an interest in an investment asset, the rights and benefits specified in the agreement under which the interest in the investment interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

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

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

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

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

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"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

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

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

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

"regulatory asset" means the right established under section X to recover the amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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

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

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment**

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Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]

"variance account" means the variance account established under section 20.1xx.

Specified consumers

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

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

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

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

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

    i. a dwelling,

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

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

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

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

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

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

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

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

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

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

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

Effect of invalidity, etc.[5]

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

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

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

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

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment; or **[NTD: the clean energy adjustment is allocated and collected rateably]**

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

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

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"average baseline invoice amount" means the monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

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

Rate determination

(2) Subject to subsection (3), to more fairly recognize clean energy benefits and allocate the clean energy costs among present and future generations of specified consumers, the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

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

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

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

Same

(2) For greater certainty, subsection (1) applies regardless of,

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(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

Irrevocability of clean energy adjustment

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

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. The Financial Services Manager shall estimate the finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method. **[NTD: the true up amount may be either positive or negative.]**

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3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

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

2. The method for determining the true up amount should take into account,

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

   ii. aggregate variations in billings due to variations in electricity consumption, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to receive

(2) The IESO shall, as an agent of the investment asset owners, receive the clean energy adjustment paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of

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the *Electricity Act, 1998]*. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.] [NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].**

Collection account

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

1. Amounts described in subsection 12 (4).

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

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners. **[NTD: see sections with security interest language.]**

IESO to remit

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

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer in respect of the clean energy adjustment, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(3)Each electricity vendor shall, as an agent of the investment asset owners, collect the clean energy adjustment paid by specified consumers [in accordance with the regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

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

Same

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

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

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

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

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred .

Principles

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

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences should be implemented in a manner that the Financial Services Manager considers to be reasonable, to be cost effective and to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

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

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

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

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

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

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

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

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If any transfer provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be equal to A – B + C where:

A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

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[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account
20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same
(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers or an error in the information provided by an electricity vendor, the IESO shall record in the variance account an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same
(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

Same
(4) IESO shall record in the variance account all payments received by the IESO resulting from the right of recovery under section 21 or any transfer under section 22.

Recording determinative
(5) Each recording by the IESO in the variance account is determinative as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner
(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established
21xx. (1) IESO has the right, exercisable in accordance with this Act and the regulations, to recover from specified consumers the balance from time to time recorded in the variance accounts.

Same

(2) The Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

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

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity. **[NTD: not necessary and unhelpful to refer to the Financing Plan in relation to transfers]**.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

Vesting, deemed Perfection

(3) Each transfer of a regulatory asset shall be deemed to have been and shall be perfected and vested as against IESO and all other persons who have claims of any kind against IESO or the regulatory asset.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer or have registered or otherwise perfected their interest.

PART VI
THE INVESTMENT ASSET

Investment asset

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest**.**

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(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

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

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

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

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

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

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

Transfer of investment interest

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

Validity of transfer

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

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

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[NTD: the earlier provisions provided that the PPSA does apply]

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

[7] Note - see s. 51 of the Electricity Act, 1998

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(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. incurring liabilities in relation to the regulatory asset

b. transferring the regulatory asset for consideration;

c. acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017.*

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

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Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

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SCHEDULE 1
FINANCE AMOUNT

Finance amount

1. The finance amount for a reference period shall be the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Version 3 [IESO comments]

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

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities ~~in the Province~~ for the generation of electrical energy and the production therefrom for Ontario,[2] and conservation and demand management. **[NTD: small point, but there are two IESO procurement contracts for hydro facilities located in Quebec but that are connected to and supply energy to Ontario.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*

[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

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The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

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

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

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

(a) the estimated ~~costs~~amounts to be ~~incurred~~paid by the IESO ~~under~~referred to in section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for,~~ **[NTD: if the intent is to reference the costs associated with the following procurement contracts, and payments under section 78.5 of the OEB Act, we would suggest that the highlighted language above is unnecessary. The IESO does not incur costs**

under section 25.33. Note we have proposed defining "procurement contract" by reference to the Electricity Act definition.]

a. procurement contracts for:

a. ~~(i)~~ renewable energy generation or capacity,

b. ~~(ii)~~ conservation and demand management, including storage, **[NTD: should storage be included as CDM, or as a separate item? Is intent to include only storage procured by OPA as procurement contract, or also storage procured by IESO under market rules?]**

c. ~~(iii)~~ energy efficiency,

d. ~~(iv)~~ natural gas generation and capacity, excluding ~~contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other~~such contracts as may be prescribed, or **[NTD: if these are the only "procurement contracts" do not need to exclude 78.2 since OEFC contracts would by definition not be included.]**

b. ~~(v)~~ payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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

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

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

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

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

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"electricity vendor"[4] means ~~the IESO,~~ a licensed distributor, a licensed retailer or such other person as may be prescribed, and shall include the IESO to the extent that the IESO directly invoices a specified consumer; ("French")

"fair adjustment" means the ~~determination of the~~ rate payable for electricity in accordance with Part II; ("French") **[NTD: isn't the fair adjustment the rate, not the act of creating the rate?]**

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

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

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment asset owner under section x in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation; ("French")

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

"IESO funding shortfall" means~~, in respect of a reference period,~~ the amount determined under section 20xx ~~for the reference period~~; ("French") **[NTD: The funding shortfall is the amount IESO records in the variance account monthly. Monthly recording of shortfall is consistent with section 20xx. We suggest this definition does not need to reference a time period.]**

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset, ~~which entitles~~and, in the case of a transfer of an interest in an investment asset ~~owner to~~ , the rights and benefits specified in the agreement under which the ~~ownership~~interest in the investment interest is transferred;

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

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"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

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

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

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

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

"procurement contract" has the meaning provided in the *Electricity Act, 1998*;

"reference period" means,

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

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

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

"regulatory asset" means the right established under section X to recover the ~~IESO funding shortfall~~amount recorded in the variance account; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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

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

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means ~~an~~(i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that it is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and (ii) in relation to an investment asset or any investment interest, any assignment, conveyance, disposition or sale~~; ("French")~~ thereof, and, in each case, transferred shall have a corresponding meaning; ("French") **[NTD: For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.]**

"variance account" means the variance account established under section 20.1xx.

Specified consumers

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

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

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

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

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

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i. a dwelling,

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

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

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

5. The person satisfies such **[other / additional?]** criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

   i. The commodity price of the electricity used during the invoice period.

   ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

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

   iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

   v. Any other amounts or adjustments as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

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

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

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

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

    iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month **[NTD: is it necessary to make assumptions relative to time of use, since that will determine the dollar amount paid by that customer]**.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in~~

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~~the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[5]

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

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

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

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

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment ~~or lower the priority of~~; or **[NTD: the clean energy adjustment** ~~over other debts; or~~**is allocated and collected rateably]**

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

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

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

Clarification with respect to regulations

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

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018

Definition

6xx. (1) In this section,

"average baseline invoice amount" means the ~~average~~ monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate **[NTD: or rates, to reflect time of use?]** that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French") **[NTD: since the OEB has already lowered RPP rates under 79.16(1)(b) that are payable May 1, 2017, this definition may need to indicate the average baseline rate is the rate that would have been determined in the absence of the government's proposed Fair Hydro Plan.]**

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

Rate determination

(2) Subject to subsection (3), ~~[~~to more fairly ~~measure~~recognize clean energy benefits and allocate the clean energy costs ~~and clean energy benefits~~ among present and future

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generations of specified consumers,~~]~~ the rate **[NTD: rate or rates?]** for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate **[NTD: or rates, to reflect time of use?]** that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: if the rate determined by regulation is different from the rate OEB just set for May 1, will consumers receive a rebate for the difference? Do there need to be provisions addressing this? How does the above align with subsection (4)(b) below?]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

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

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Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate **[NTD: will regulations prescribe the rate, or the criteria to be applied by the Board in setting the rate? It is important for the establishment of a regulatory asset that the Board establishes the rate that results in the variance. The Board will also need to determine what RPP/price would have been without these provisions. We suggest adding a corresponding section to s 6xx(4).]** for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

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

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation made by the Financial Services Manager under Part IV applicable at the time when the payment is due; and **[NTD: the Fair Allocation Plan is not called for in the Bill now. Note there are still a few references to Fair Allocation Plan in the Bill, which we assume will be changed in the next iteration if the current approach of not using a FAP remains.]**

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

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

Same

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

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other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

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

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows and as may otherwise be prescribed:

1. ~~Calculate~~The Financial Services Manager shall estimate the ~~estimated~~ finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. ~~Add~~ The Financial Services Manager shall calculate the true up amount for the reference period, as determined in accordance with the prescribed method~~, to~~. **[NTD: the true up amount may be either positive or negative.]**

3. The Financial Services Manager shall, not less than xx days prior to the applicable reference reriod, inform the Board of the estimated finance amount ~~calculated under paragraph 1.~~and the true up amount.

Rate determination

(2) The Board will determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period in accordance with the regulations.

True up amount

(~~2~~3) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

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

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

   i. aggregate differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, ~~and~~

   ii. aggregate variations in billings due to variations in electricity consumption~~.~~, and

   iii. the variations between the estimated finance amount for a reference period and the actual finance amount for that period.

[NTD: the IESO does not need and should not be required to issue an invoice or statement to electricity vendors. The IESO will not know the amount to be invoiced and electricity vendors have an obligation under 12xx to remit amounts collected to the IESO which in turn will collect and remit to the investment asset owner. The investment asset owner will then record the variance between the clean energy adjustment determined in 10xx(1) and the amount remitted by the IESO which it will then factor into the true up.]

IESO to ~~issue remittance notice to electricity vendors~~receive

~~11xx.~~ ~~(1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.~~

~~IESO to collect~~

(2) The IESO shall, as an agent of the investment asset owners, ~~collect~~ receive the clean energy adjustment ~~from~~paid to it by electricity vendors [in accordance with the regulations and the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*]. **[NTD: the IESO's obligation will be to collect and remit from electricity vendors what is paid. We understand from prior discussions the obligation is not to collect everything that is invoiced by electricity vendors (other than IESO). Any underpayment will be recorded in a variance by the investment asset owner/financial services manager and recovered in a future reference period.]**

[NTD: The IESO does not object to describing the electricity vendors as sub-agents of the IESO. However, if the electricity vendors are so described exculpatory language of the sort we have provided earlier should be added so that the IESO is not responsible for the acts or defaults of the electricity vendors].

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Collection account

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

1. Amounts described in subsection 12 (4).

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

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust by the IESO for the investment asset owners ~~or a secured party to whom a~~**. [NTD: see sections with security interest** ~~in an investment interest is granted under this Act.~~**language.]**

IESO to remit

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

~~**Collection of outstanding amounts, regulatory asset**~~

~~(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.~~

Electricity vendor to invoice specified consumers

12xx. (1) ~~The~~Each electricity vendor shall issue an invoice to each specified consumer with an account with such electricity vendor for the amount payable by such consumer~~'s amount~~ in respect of the clean energy adjustment ~~in accordance with the regulations~~, determined by applying the rate set by the Board under section 10xx(2) and as further prescribed.

Electricity Vendor to Report

(2) Each electricity vendor shall promptly report to the IESO the aggregate amount invoiced to its customers in respect of the Clean Energy Adjustment, the amount collected and such further information as may be prescribed.

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Electricity vendor to collect

(~~2~~3) Each electricity vendor shall, as an agent of ~~the IESO and~~ the investment asset owners, collect the clean energy adjustment ~~from~~paid by specified consumers [in accordance with the ~~monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*~~ regulations.] **[NTD: deletion to be consistent with 8xx(1). LDCs do not collect from consumers in accordance with market rules. LDC collection is governed by Board codes.]**

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor ~~other than the IESO~~ shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners ~~or secured parties~~ in accordance with the regulations. **[NTD: deletion to be consistent to our proposed change to the definition of electricity vendor.]**

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

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PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

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

Same

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

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

2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

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Review of costs

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

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

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

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].
2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

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

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

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

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made for the purposes of this Act~~.

Principles

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

1. Any incurrence of a funding obligation should reasonably align with the expected finance amount determined under Schedule 1 that would become due and payable during a reference period (after giving effect to any contemplated refinancings) with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences ~~and transfers~~ should be implemented in a manner that~~, as~~ the Financial Services Manager considers to be reasonable, ~~is~~to be cost effective and ~~reflects~~to reflect prevailing market terms and conditions [NTD: cannot apply prevailing market terms and conditions to transfers].

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

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

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Limitation, first five year period

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

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

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

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations ~~and make transfers~~ in material conformity with the applicable Financing Plan **[NTD: since transfers are not mandatory and are in any event subject to available financing, there is no need to generate uncertainty by making them expressly subject to the Financing Plan]**.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and accept and make transfers.

Prohibition

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

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Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer accepted or made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If ~~a~~any transfer ~~under this Part~~ provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred. **[NTD: probably unnecessary]**

[Note: This is meant to assist with clarity in the subsequent provisions.]

~~**Variance account**~~

~~**19xx.** (1) The Board shall issue an accounting order to authorize the IESO to do the following:~~

~~1. Create a variance account for the purposes of this Act.~~

~~2. Record the IESO funding shortfall in the variance account from time to time.~~

~~3.Recover the IESO funding shortfall in accordance with section X and the regulations.~~

~~**No hearing**~~

~~(2) The order of the Board shall be made in writing and without holding a hearing.~~

~~**No appeals, etc.**~~

~~(3) No appeal lies from the order of the Board.~~

IESO funding shortfall

20xx. (1) The IESO ~~shall determine the IESO~~ funding shortfall for each month ~~in the following manner~~shall be equal to A – B + C where:

1. ~~Calculate~~ A = the sum of all invoice amounts (not including HST) which would have been issued to specified consumers for the month if Part II of this Act did not apply.

2. ~~Calculate~~ B = the sum of all invoice amounts (not including HST) in fact issued to specified consumers for the month.

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~~3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.~~C = the sum of all financing costs related to all IESO funding shortfalls incurred by IESO for the month **[NTD: in the event IESO pays financing entity's interest costs during first 5 years, such costs should be added to the IESO funding shortfall.]**

Reliance on certain information

(2) For the purposes of calculating A and B of section 20xx(1), the electricity vendors shall provide to IESO such information as IESO may reasonably require and such further information as may be prescribed and the IESO shall be entitled to rely on such information. **[NTD: the IESO cannot calculate this amount without obtaining necessary information from electricity vendors. Electricity vendors will need to apply consumption of each consumer in each TOU bucket, or tier at what price would have been, and also what price is now.]**

[NTD: we have used the term "IESO funding shortfall" throughout to denote the monthly amount and the "variance account" to record the cumulative balance.]

Variance account

20.1xx (1) The IESO shall establish and maintain a variance account and shall record in such variance account the amount of the IESO funding shortfall for each month. **[NTD: this is consistent with section 25.33(6) of Electricity Act. Consider reg making authority to govern the variance account.]**

Same

(2) To the extent that the IESO funding shortfall for any month is determined based on an estimate of the electricity used by specified consumers~~,~~ or an error in the information provided by an electricity vendor, the IESO shall record ~~an adjustment~~ in the variance account ~~in the following month~~an adjustment to reflect the difference between the estimate or the erroneous information and the electricity actually used by specified consumers.

Same

(3) IESO shall record in the variance account such other adjustments as may be prescribed by regulations.

~~**Recording of IESO funding shortfall**~~

Same

(~~3~~4) IESO shall record in the variance account all payments received by the IESO ~~funding shortfall from time to time, including adjustments~~ resulting from ~~the exercise of~~

the right of recovery under section 21 ~~and~~or any transfer under section ~~22, in the variance account.~~22.

Recording determinative

(~~4~~5) ~~A~~Each recording ~~of~~by the IESO ~~funding shortfall~~ in the variance account is determinative ~~of the amount of IESO funding shortfall~~as at the time of the recording, and the balance recorded by the IESO in the variance account from time to time is determinative of such balance at such time, absent manifest error.

Rights of Investment Asset Owner

(6) A transferee may rely, without inquiry, upon the balance in the variance account certified by the IESO and no error in such certification and no subsequent adjustment to the balance in the variance account shall affect the rights of the investment asset owner acquired pursuant to a transfer under section 22xx.

Regulatory asset established

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

Same~~, restrictions~~

(2) The ~~IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:~~Board shall, from time to time, in accordance with this Act and as further prescribed by regulation, determine and set rates payable by specified consumers so that IESO is able to recover the balance recorded in the variance account. **[NTD: if the IESO's right to recover is expressly subordinated to that of the investment asset owners, we are advised that the IESO will not be able to record the creation or divestiture of the regulatory asset.]**

Same, restriction

~~1. The~~ (3) IESO shall not be entitled to collect ~~the IESO funding shortfall~~all or any part of the balance recorded in the variance account from specified consumers before May 1, 2022.

~~2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].~~

~~3. Such other restrictions as may be prescribed.~~

Transfer of regulatory asset

22xx. (1) The IESO may, from time to time, transfer all or a portion of the regulatory asset to any financing entity ~~under~~. **[NTD: not necessary and unhelpful to refer to the Financing Plan~~, which transfer creates the investment asset~~ in relation to transfers]**.

Same

(2) Upon receipt by IESO of ~~any~~ payment in consideration ~~for the~~of a transfer~~, (a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account;~~ of all or a portion of the regulatory asset, the transfer shall be valid and enforceable as against the IESO. The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and ~~(b) unless otherwise provided for in this Act, the IESO~~ shall have no ~~further~~ right, title or interest in~~, or any obligations in respect of, the regulatory asset or in the~~ any investment asset ~~created by the transfer.~~arising under this Act.

~~**Same**~~

Vesting, deemed Perfection

(3) Each ~~Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.~~ **~~Validity~~**transfer of ~~**transfer**~~

~~**23xx.** (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.~~

~~**Same**~~

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

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

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims against IESO or the regulatory asset have received notice of the transfer ~~and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons~~or have registered or otherwise perfected their interest.

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PART VI
THE INVESTMENT ASSET

~~Interpretation, investment~~Investment asset

~~**24xx.**~~

24xx. (1) Upon any transfer of all or a portion of the regulatory asset to a financing entity, an investment asset is created, the investment asset created by the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment asset owner and acquires an investment interest.

(2) The IESO shall retain no right, title or interest in the portion of the regulatory asset transferred and shall have no right, title or interest in any investment asset arising under this Act.

(2) If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

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

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

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

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

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

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6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

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

No set off, etc.

(2) The investment asset shall not be set off ~~or reduced by any person in any circumstance, including, (a)~~ by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province~~;~~

~~(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or (c)~~ or by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

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

Transfer of investment interest

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

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the

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investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

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

Priority of transfer, assignment, etc.

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

Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to

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the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

(7) The secured party shall be entitled to exercise the rights of an investment asset owner under the Act only after it has given notice of the enforcement of its security interest to the IESO.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

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Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

~~**Same**~~

~~(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.~~

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

~~**Conflict**~~

~~**33xx.** The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.~~ **[NTD: the earlier provisions provided that the PPSA does apply]**

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding ~~for damages~~ shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or

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undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* or regulations under the Act and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, ~~2017,~~2017* or regulations under the Act, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] Note - see s. 51 of the Electricity Act, 1998

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities; **[NTD: enhance this object if IESO paying financing entity's interest costs during first 5 years.]**

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset and the investment asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

a. ~~(iv)~~ incurring liabilities in relation to the regulatory asset;

b. ~~(v)~~ transferring the regulatory asset for consideration;

c. ~~(vi)~~ acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

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6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

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[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

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

SCHEDULE 1
~~ESTIMATED~~ FINANCE AMOUNT

~~Estimated finance~~Finance amount

1. The ~~estimated~~ finance amount for a reference period shall be ~~determined by estimating, prior to the start of a reference period,~~ the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Style change	
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Inserted cell	
Deleted cell	
Moved cell	
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Statistics:	
	Count
Insertions	157
Deletions	162
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	327

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
Attachment 1: image001.jpg
Attachment 2: SETOR1-#6709178-v8-Fair_Hydro_Plan_-_Issues_to_be_Addressed.doc

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Please see attached the IESO/Stikemans comments.

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From: Feldman, Michael [mailto:mfeldman@torys.com]
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Subject: RE: Ontario Fair Hydro Plan

All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

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Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We

suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

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Subject: Ontario Fair Hydro Plan

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

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

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

Carolyn Calwell

Legal Director

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Intergenerational Fairness in Hydro Rates Act, 2017 (draft)

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. In our view, recovery by the IESO should be determined by OEB in accordance with the regulations and/or the Fair Allocation Plan. To this end, the IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act, with such necessary OEB accounting order.

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall. (1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits: 1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. 2. No part of the funding shortfall shall be recovered before May 1, 2022. (2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment. 22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. (2) The Ontario Energy Board may, in accordance with the regulations, by	22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.] NTD: to the extent qualification as a regulatory asset is an accounting judgment there may be little value in attempting to dictate that result by statute. However, the use of a defined term "regulatory asset" for other purposes is fine. Is the intent that Sections (1.1)(1) and (1.1)(2) would limit the recovery rights of the Investment Asset Owner or just the IESO in respect of the regulatory asset. Any material express limitation or condition attached to the IESO right of recovery based on the fair allocation plan is likely to be problematic as impairing the effective right of recovery. If this is the result then IESO may be treated as an equity holder and may not be able to recognize the regulatory asset. In addition, Section (1.1) 1 appears to reintroduce the concept that IESO's

order specify how the IESO funding shortfall must be recorded.	funding shortfall amount ranks subsequent to the clean energy adjustment amount such that the recovery of the IESO's funding shortfall in a reference period is limited to whatever space is left under the fair allocation curve. . If the right to record the shortfall is subject to an OEB order, that order may need to be obtained in advance This language and structure may not be definitive enough to provide for a real right of recovery of any regulatory asset amount held by the IESO. The statute should provide that the IESO be required to record the funding shortfall in a variance account (without having to obtain OEB approval) and that the OEB be required, as prescribed by regulation, to provide for recovery of the variance amounts recorded - presumably the regulation could provide when, after 2022, and in what manner (i.e., over what period of time) the IESO can recover any regulatory asset amount. OEB, by accounting order, would establish an IESO [fair hydro] variance account and indicate what IESO shortfalls may be included in it. The OEB is not approving each funding shortfall. The OEB's role in recovery would be to include the funding shortfall variance in future prices so IESO may recover it. In Section 6, OEB also needs to continue to determine what RPP price would have been payable but for the price set by Section 6. This is needed so LDCs know what amount would have been invoiced, so IESO in turn, based on information provided by LDCs, can determine the funding shortfall.

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.	Note that Section 7 restricts prices increases to inflation forever. We suggest redrafting this to delete "for inflation" in paragraph 2. Section 8.2 is unclear with respect to what limits cannot be exceeded. It introduces uncertainty with respect to the IESO right to record a shortfall and the IESO right of recovery. It may therefore prejudice the accounting treatment.

2. In our view, the IESO should become and remain the owner of a distinct asset, defined as the Regulatory Asset. Upon a "transfer" of all or a portion of this Regulatory Asset, the Investment Asset owner acquires an Investment Asset. On this construct the IESO is not a co-owner with the Investment Asset owner of an asset, the IESO's portion of which is the Regulatory Asset and the Investment Asset's owners potion of which is the Investment Asset. The IESO, based on conversations with KPMG, believes that it obtains a better result from an accounting perspective if it owns a distinct asset, as opposed to a co-ownership interest which is likely to be treated as a residual or subordinated interest.

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan. 23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	NTD: The IESO right to transfer should not be subject to compliance with the Financing Plan. Consider corresponding amendment to Section 8.1 (1.1) so that the Fair Allocation Plan and the Financing Plan do not limit the ability of the IESO to transfer, or collect in respect of, a Regulatory Asset which has already arisen.

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that is not deemed to be an investment asset**; "investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x;	23. The IESO may, from time to time, transfer all or any portion of the regulatory asset. Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies. Any such transfer shall be without recourse to the IESO and upon any such transfer the IESO (or any person claiming through the IESO) shall have no further right, title or interest in (except as express provided herein) or any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment asset. "regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that has not been transferred**; "investment asset" the investment asset established under section x;

3. We think that further particulars will be required in relation to the definition of the Funding Shortfall. Therefore we would add reference to "as prescribed by regulations" to address the need to provide for any variance/true up. We also need regulations to address recovery of IESO funding costs (which at moment legislation does not address).

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: 1. The sum of all invoice amounts issued to specified consumers for the month. 2. The sum of all invoice amounts that would have been issued to	22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period in accordance with the regulations. NTD: We think that the reference to a "reference period "is unnecessary. Alternatively make provision for the addition or subtraction of additional amounts as further prescribed by

specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply. (2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.	regulations.

4. For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. That terminology implies the transfer of property from one person to another. First, there remains uncertainty at law (even with the revised "fishing licence language") with respect to the whether the Investment Asset acquired by the Investment Asset Owner is property. Second, there is a higher level of uncertainty with respect to whether the Regulatory Asset is property, given that the Regulatory Asset does not have the same level of certainty of recovery as does the Investment Asset, and lacks some of the ancillary rights attached to the Investment Asset. Third, even if both the Regulatory Asset and the Investment Interest constitute property, there is a continuity gap between them since the rights acquired by the Investment Owner are different from the rights disposed of by the IESO.

We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.

"transfer" means an assignment, conveyance, disposition or sale.	"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a result, constitute a named person the owner of an investment asset under this Act and (ii) in relation to an investment

	asset or any portion thereof …., and, in each case, transferred shall have a corresponding meaning.
25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.	Probably unnecessary, at least in relation to the Regulatory Asset, because of the effect given to a transfer of the Regulatory Asset in Section 23. In any event, because of the differences in the definition of "transfer" and because discontinuity is an issue for the Regulatory Asset but not for the Investment Interest, we would suggest that there be separate provisions dealing with the transfer of the Regulatory Asset and the Investment Interest.
(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.	NTD: not sure that there is any value in deeming a transfer to be absolute.
(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.	NTD: Perfection not likely relevant. Transfer should be free of any adverse claim.

5. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. (2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations. (3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.	(4) The IESO shall not be liable to the Investment Asset Owner, any pledgee, or any person claiming through the Investment Asset Owner or any pledgee, for any failure to collect or remit, or any other breach or failure to perform, by any electricity vendor. Do we need to address the very limited circumstance of the IESO as an electricity vendor? Section 13x(1) does not appear to contemplate a volumetric rate, but rather the LDC determining a fixed amount payable by each of its consumers.

6. For constitutional reasons related to the federal bankruptcy power, limit the unnecessary use of "deeming provisions".

Section 15x (2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.	(2) The amounts deposited into the account, until paid in accordance with this Act and the regulations, shall be held in trust by the applicable electricity vendor for the investment asset owner.
Section 12 (2) The amounts collected are deemed to be held in trust for the investment asset owner.	(2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with this Act and the regulations shall be held in trust by the IESO for the investment asset owner.
23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	…Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies and the IESO (or any person claiming through the IESO) has no further right, title or interest in the portion of the regulatory asset transferred, or in the corresponding investment asset.
Section 25 (3) At the time a transfer of a regulatory	Delete, see new Section 23.

asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	
"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")	"investment asset" the investment asset established under section x;
"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset;	"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that has not been transferred;

7. Does the clean energy adjustment determine the amount payable in respect of both the Regulatory Asset and the Investment Asset? If so, any subordination or other arrangement that results in the IESO receiving a residual interest may impact de-recognition. In our view, this calculation should exclude the IESO, and the IESO should have a separate right of recovery assessed by the OEB.

"clean energy adjustment" means…	Should specify that this is the amount required by the Investment Asset Owner and does not relate to IESO's right of recovery. Consistent with this, Schedule 1 is defined in relation to the funding and other costs of the owner of the investment asset.
11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified	Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy

consumers. (2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment. (4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.	adjustment for a reference period.

8. In order to ensure that the Disposition results in the de-recognition of the "regulatory asset" on IESO's books (and that the Disposition not be treated as a financing transaction) it is important the Disposition) by IESO to the financing trust be without recourse to IESO and that all collection obligations on the part of IESO be on a reasonable efforts, or consistent efforts, basis only. Therefore, clarify that the IESO's trust and remittance obligations are limited to amounts actually received by it. IESO's obligation to segregate and remit should be conditional upon receipt of the corresponding amounts from the electricity vendors.

Section 12 (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). (2) The amounts collected are deemed to be held in trust for the investment asset owner.	Section 12 (4) The IESO shall promptly deposit all amounts received by it from electricity vendors pursuant to Section x into the account established under subsection (3.1). (2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.	this Act and the regulations shall be held in trust by the IESO for the investment asset owner. (5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations. Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy adjustment for a reference period.

9. Daily remittances are not consistent with the operation of the system and may not be practical. At the very least, this should be left open to be addressed in the commercial documents.

Section 12x (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1).	Define "promptly", or provide that it is to be specified in the Regulations. The invoicing contemplated by section 12(2) regulations should be done based on IESO's monthly settlement process. It would appear that this is the case; section 13(1) references LDCs determining clean energy adjustment on a monthly basis. (4) contains a Note about considering daily segregation or remittances. IESO does not believe daily remittances are necessary. Daily remittances would add additional complexity and cost to the settlement process. It is not clear that LDCs would be able to move to daily remittances without substantial cost and effort.

	The risk of a particular LDC going bankrupt is small. If an LDC does go bankrupt, daily remittances merely minimizes risk of a month of remittances for that one LDC, which the Financing Entity can recover in a future period in any event through the True Up.

10. Consider the extent to which deeming provision are required in connection n with the operation of the PPSA. The number of deeming provisions raises the issue of whether the security interest provided for is one provided for by statute or one provided for by the PPSA. For the most part, once the application of the PPSA is provided for, the perception, priority and proceeds rules in the PPSA ought to be allowed to operate (and should not prejudice the transaction).

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.	Use PPSA term "security interest"
(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.	Redundant. In any event, the reference to set-off is not relevant or appropriate. Why not use PPSA terminology.
(3) The pledge may be made to secure a funding obligation **and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.**	Redundant and may prejudice the conclusion that a conventional PPSA security interest is intended,
(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider

(x) A pledge perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.	whether that can or should be done. Redundant, the priority rules in the PPSA should be sufficient,
(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act. (9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted. (10) The person to whom the pledge has been granted shall have a perfected	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.

security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.	

11. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated.

14x. (1) This section applies if, (a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and (b) the amount paid is less than the total amount payable. (2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. (3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.	Correct.

12. In order not to impair the ability of the IESO to dispose of its interest in the Regulatory Asset and in order not to impair the financibility of the Investment Interest by the Trust, subsequent actions and compliance with allocation plan and

the financing plan should not be a condition of the effectiveness of any aspects of the transaction.

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.	(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a **transfer, funding obligation or grant of a security interest** that was effected or incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

13. Provide legislative basis for provision of commercial undertakings of the sort which may be required for purposes of h financial close.

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 would be amended by adding the following clauses: (q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)]; (q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities; (q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include, (i) incurring liabilities in relation to the regulatory asset (ii) transferring the regulatory asset to [any special purpose financing	Retain specific objects but add a general object "to engage in activities to facilitate the implementation of the Fair Hydro Act, including:…" NTD: incorporate the expanded

entities established under (name of new Fair Hydro Act?)];	definition of "transfer"
(iii) transferring the regulatory asset to third parties;	NTD: "and the "transfer thereof"
(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];	NTD: consider need a for authority to enter into, if required, underwriting agreements and sign offering documents
	NTD: Consider need for exemption under *Collections Agencies Act*.

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Compare - Fair Hydro Act - Osler Comments on v 4.pdf
Attachment 5: Fair Hydro Act - Osler Comments on v 4.docx

Please find attached Osler's most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of points from our mark-up on Sunday did not make it into this draft of the legislation and in the interests of time we have not marked them back up, but they remain outstanding.

Elliot

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Subject: RE: Ontario Fair Hydro Plan

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

Jennifer

Jennifer J. Kacaba

Counsel

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Subject: RE: Ontario Fair Hydro Plan

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

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

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

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

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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Subject: RE: Ontario Fair Hydro Plan

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

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Subject: Ontario Fair Hydro Plan

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

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

Ontario Energy Board Act, related to the consequential amendments.

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

Carolyn Calwell

Legal Director

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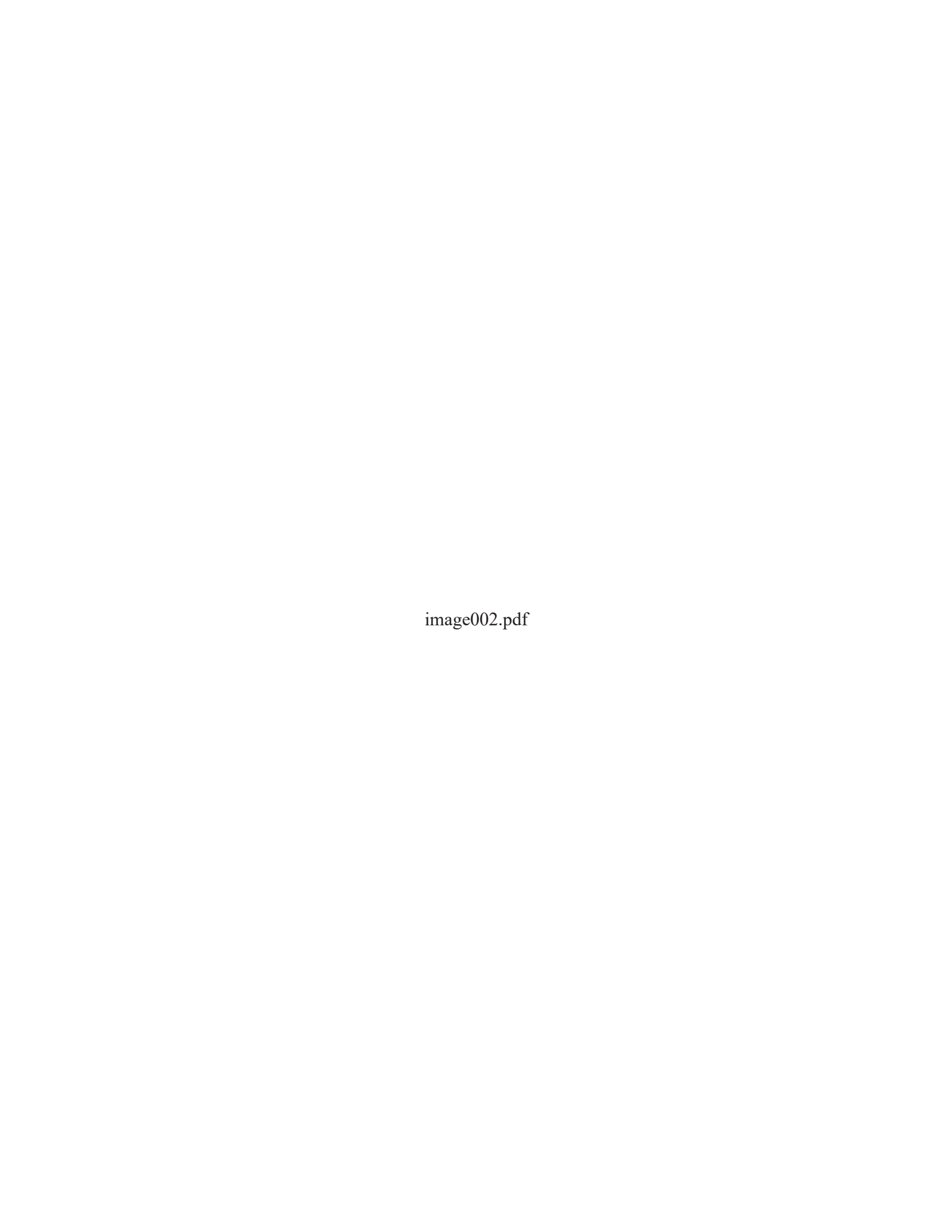
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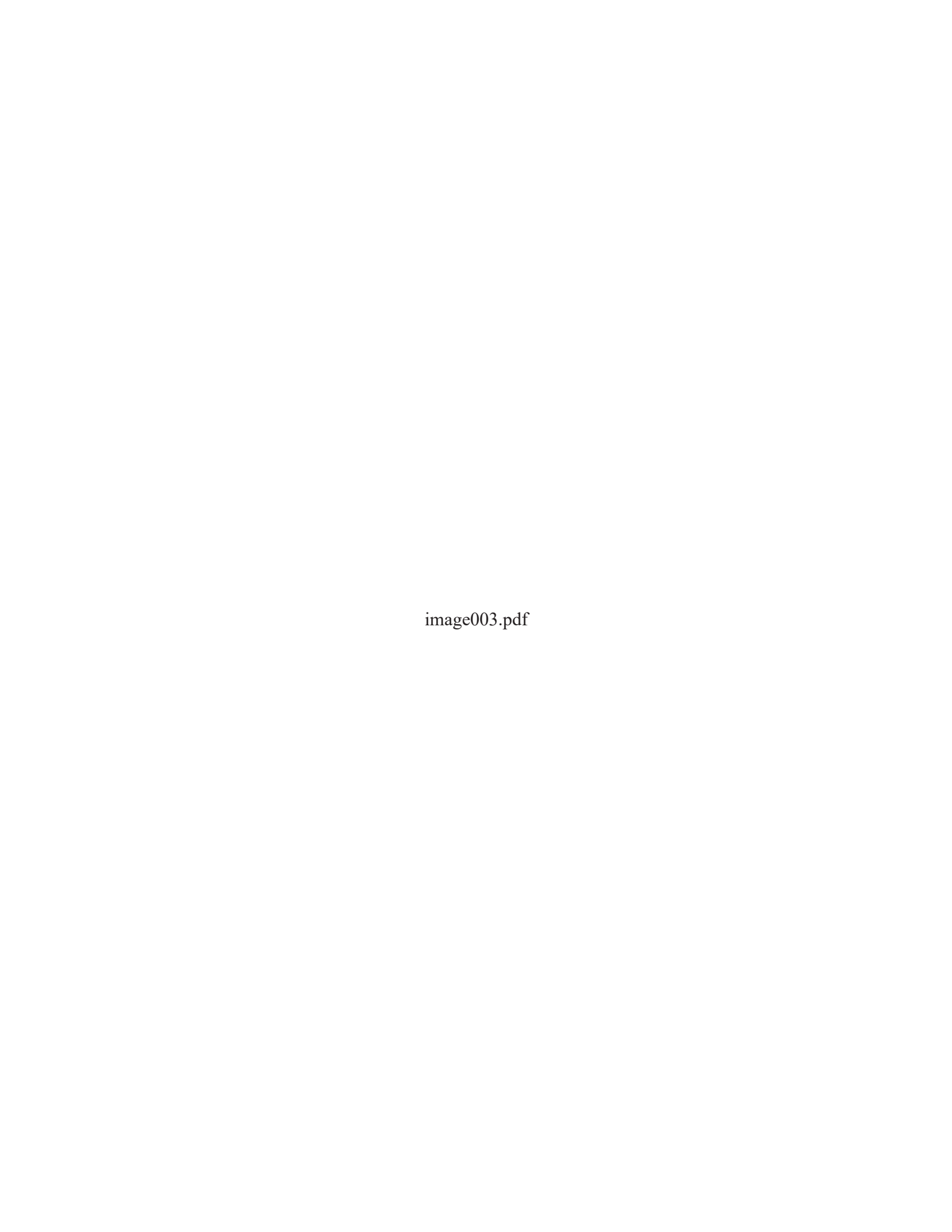
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2017
CANADA'S BEST
DIVERSITY EMPLOYERS

Compare - Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

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

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable]** **[NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) ~~The~~Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act. and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. ~~Any incurrence of a funding obligation should reasonably align with~~Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during ~~a~~each reference period will reasonably align with the fair allocation amount determined in respect of ~~the~~such reference period under this Part as ~~of~~estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not ~~be~~result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy**

adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario

Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the

balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, ~~the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner ~~of the regulatory asset~~.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

~~**200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

~~**(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d)amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable][NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act, and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during each reference period will reasonably align with the fair allocation amount determined in respect of such reference period under this Part as estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]**

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties

arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:53:33
Attachment 1: imagec5fcbe.JPG
Attachment 2: Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).DOCX
Attachment 3: Blackline - Fair Hydro Plan Act (Torys comments).pdf

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All,

Further to Michael's email, please find attached a mark-up of the draft Bill containing OPG and Torys' consolidated comments. Please note that this draft remains subject to the continuing review of OPG.

Thanks,

Brett

Brett Saulnier

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Subject: RE: Ontario Fair Hydro Plan

All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importance. We plan to follow up later this evening with a markup of the draft Bill that reflects these comments as well as a few drafting points.

Major Issues

1. It is critically important to have a definition of "transfer" that is broad enough. We had a mark-up as did Stikemans. I prefer ours but the two are not really that far apart. I would suggest a call with Ashbourne, Hamilton and Feldman tonight or tomorrow to get consensus.

2. Section 6.1. The process for determining the rate for electricity under 6.1xx may not be workable or requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for every specified consumer, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, what authority do they have to determine

these rates given prohibition under s. 78(2) of the OEB Act?

3. Section 8xx (2)(b) – delete “material” from last line of the paragraph – we probably don’t want to get into a dispute about whether a funding obligation was incurred in a manner that was in “material” conformity with the Financing Plan. In addition, as drafted, it would actually mean that if there were a material issue, the charge would be irrevocable, but if it was not material, then arguably the charge could be revocable.

[4. Section 10xx (1) – Will OPG, as Financial Services Manager, be able to determine the monthly clean energy adjustment?]

5. Prior Section 11xx (1), “The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor’s portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period” should be reinserted.

6. Section 13(2) gives the Minister the ability to replace the Financial Services Manager. I think, because of section 17, this would mean that the Minister would have the ability to replace the FSM of an up and running financing entity. The Minister should not have that power. That power should only be exercisable by Debtholders. We had suggested bifurcating the role of the FSM for this purpose and limiting this replacement power to the purpose of preparing the Financing Plan. Perhaps another way of addressing this would be to have an explicit carve out to the effect that the Minister’s rights will not extend to OPG’s rights as FSM of a financing entity that has already issued funding obligations under section 17. This is also important in order to achieve the desired accounting treatment.

7. Section 15. The draft still has the FSM determining the fair allocation amount. This is OPG’s issue of greatest concern. We are attaching a proposal prepared by OPG to suggest a compromise between our last mark up, which had the Minister assume full responsibility, and the latest draft Bill which leaves the responsibility fully on OPG.

8. In s. 16(5) the draft Bill still proposes to treat the Financing Plan as a confidential document. We believe that unless the Minister allows for disclosure of the Financing

Plan we will not be able to satisfy disclosure obligations under securities laws.

9. s. 17(1) implies that the FSM may incur funding obligations itself. Is this a drafting error or is the intention to be building in flexibility so that OPG would be able to purchase the IESO funding shortfall itself in case OPG and the Dealers can't get a deal done quickly enough (impractical as that may be) ?

10. Section 22(2) still says that IESO does not retain any obligations in respect of the investment asset. This originally came from IESO and it should be dropped. It is incorrect. IESO does have obligations in respect of the investment asset. It has obligations in the Act and the regulations and it will have obligations in the master sale and servicing agreement.

11. Section 25xx (1) – delete references to "and recover amounts in respect of". Definition of clean energy adjustment already reflects that it is an amount and the financing entity should be entitled to the full clean energy adjustment.

12. Section 38 of our previous markup had a provision for "Standing and Remedies" of a financing entity which was derived from the OBCA and we believe it would be a serious gap not to have that.

<u>Minor Points</u>

13. The definition of clean energy initiative now appears to be narrower than the intentions seemingly expressed by the revised preamble. It should be revised accordingly.

14. The definition of "refinancing" doesn't work because it no longer requires replacing old funding obligations with new funding obligations.

15. Section 6. For the purposes of the definition of “RPP rate” in 6xx, it should be recognized that this is not a single rate established by the OEB. Rather, OEB establishes a number of RPP prices under the relevant clause. There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. If this has not been considered, it will be important to determine how this affects the rest of the drafting and the ability to calculate the necessary amounts that depend on the “RPP rate”.

16. s. 9(2) does not expressly address how these errors would be dealt with. It would be nice to specify that they would be corrected pursuant to the true up procedure in 10(3).

17. I don’t think “fair adjustment” is defined anywhere anymore. In any event, I think sections 15(1)2 and 16(4)(b) are still adding dollar amounts to the fair adjustment, which I think is an adjustment to a rate ($/Kwh). I am not sure what is meant by “value of an fair adjustment” – is this supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers ? It is not clear.

18. Section 15(2)3 still refers to time value of money or rate of inflation instead of actual financing charges on the funding obligations, which is the real factor that would have to be taken into account.

19. Changes to section 53.1 of the Electricity Act are behind our mark-up.

Michael K. Feldman

P. 416.865.7513

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-26-17 12:39 PM

To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be

proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume,

Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume,

Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act,

2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the amount of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998* **[NTD: As payments made under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph]**, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 25xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." or "OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation, as may be further prescribed; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") **[NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment asset, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the

Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive, on a monthly basis an invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different

proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty

(a) each clean energy adjustment is considered to be consistent with the fair allocation amount; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was in conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the sum of the estimated finance amount and the other cost amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced by electricity vendors to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to prepare initial calculation of fair allocation amount

15xx. (1) The Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The Minister shall calculate a fair allocation amount in respect of each reference period by the date that is **[20]** business days after the day this Act receives Royal Assent.

Certification

(1.2) The Minister shall certify to the Financial Services Manager the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Minister or the Financial Services Manager, as applicable, shall have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

ii. The expected number of specified consumers in respect of each reference period.

iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The Minister or the Financial Services Manager, as applicable, shall calculate a fair allocation amount in accordance with such methods as the Minister or the Financial Services Manager, as applicable, considers appropriate, having regard to the requirements of this Act.

Provision of updates to Minister

(4) The Financial Services Manager shall provide the Minister written notification of any updates to the calculation of the fair allocation amount made pursuant to subsection (1.3).

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment asset in accordance with this Act or for purposes of refinancing a funding obligation.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(2) The Financial Services Manager shall cause financing entities to incur funding obligations only in material conformity with the applicable Financing Plan.

Same

(3) For greater certainty, subsection 17xx (4) applies despite the failure of the Financial Services Manager to comply with subsection (2).

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) Each transfer of a regulatory asset or a portion of it either creates or increases the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment interest owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, Ontario Power Generation Inc. or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset;

(B) transferring the regulatory asset for consideration; and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity); and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity).

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and any regulations made thereunder. **[NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Blackline - Fair Hydro Plan Act (Torys comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the ~~value~~**amount** of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, ~~1998,~~**1998** [NTD: As payments made*

under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph], and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined ~~in~~ under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~**25**xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." **or "OPG"** means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means~~, subject to the regulations,~~ **the incurrence of debt in connection with** a redemption, repayment or repurchase of a funding obligation**, as may be further prescribed**; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" ~~means [TBD]; ("French")~~**includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of**

IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") [NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers ~~and reflect the fair allocation~~; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment ~~interest~~**asset**, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive**, on** a monthly **basis an** invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less

than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~**its** billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice **from an electricity vendor** that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty~~, subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment ~~was determined in a manner that was inconsistent with this Act~~**is considered to be consistent with the fair allocation amount**; and

(b) ~~whether the amount payable in respect of the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was ~~not~~ in ~~material~~ conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding **the sum of** the estimated finance amount **and the other cost amount** in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced **by electricity vendors** to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. ~~(2)~~ **1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.** The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from

electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager**, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

~~Financial Services Manager to calculate~~Minister to prepare initial calculation of fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period ~~before any funding obligation is incurred [by a financing entity during the reference period]~~**by the date that is [20] business days after the day this Act receives Royal Assent**.

Certification

(1.2) The Minister shall certify to the Financial Services Manager **the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.**

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(~~1.2~~**1.5**) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, **the Minister or** the Financial Services Manager**, as applicable,** shall ~~[comply with the regulations and]~~ have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The **Minister or the** Financial Services Manager**, as applicable,** shall calculate a fair allocation amount in accordance with such methods as the **Minister or the** Financial Services Manager**, as applicable,** considers appropriate, having regard to the requirements of this Act.

~~Notification~~**Provision of updates to Minister**

(4) The Financial Services Manager shall ~~notify~~**provide** the Minister ~~of the methods used to calculate~~**written notification of any updates to the calculation of** the fair allocation amount ~~and any changes to those methods~~**made pursuant to subsection (1.3)**.

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation **by the Minister** takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided ~~to the Minister in writing~~**by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister**.

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment ~~interest~~**asset** in accordance with this Act **or for purposes of refinancing a funding obligation**.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period~~. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference

period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

~~**Confidentiality**~~

~~(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:~~

~~1. The Financing Plan.~~

~~2. Reports referred to in subsection (3.1).~~

~~3. Any other document that would reveal information contained in the Financing Plan or the reports.~~

Amendments to plan

(~~6~~5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(~~7~~6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. **(1)** In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(~~1~~2) The Financial Services Manager shall **cause financing entities to** incur funding obligations **only** in material conformity with the applicable Financing Plan.

Same

(~~2~~3) For greater certainty, subsection 17xx (~~5~~4) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~2).

~~**Financing entities**~~

~~(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.~~

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in~~, or any obligations in respect of,~~ the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment ~~asset~~**interest** owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) ~~The first~~**Each** transfer of ~~the~~**a** regulatory asset or a portion of it **either** creates **or increases** the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover ~~amounts in respect of~~ the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for ~~amounts in respect of~~ the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor **and IESO** to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment ~~of amounts in respect~~ of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the

investment ~~asset~~**interest** owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject

to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~ccount~~**account** of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to

collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, ~~OPG~~**Ontario Power Generation Inc.** or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998
[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(~~iv~~**A**) incurring liabilities in relation to the regulatory asset**;**

(~~v~~**B**) transferring the regulatory asset for consideration; **and**

(~~vi~~**C**) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~**2017.**

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities **and performing other services on behalf of financing entities**, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a ~~special purpose~~ financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries **(other than, for greater certainty, such a subsidiary that is that financing entity)**; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity **(other than, for greater certainty, such a subsidiary that is that financing entity)**.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, ~~2017.~~**2017*** **and any regulations made thereunder. [NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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Statistics:	
	Count
Insertions	117
Deletions	68
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	189

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:15:17
Attachment 1: WSComparison__6714670_1-_6712834_3.pdf
Attachment 2: SETOR1-#6712834-v3-April_20_17_draft_FHP_from_Ministry.docx

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Please see attached the IESO/Stikemans comments.

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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

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Version 4

STIKEMAN COMMENTS/EDITS – APRIL 26/17

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system ~~is~~will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

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"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act,

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a

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specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~its billing practices and invoices to reflect the new rates.

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Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

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Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges~~.~~]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was ~~inconsistent~~consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(~~4~~3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's ~~respective~~ interest in the investment asset.

Same

(~~5~~4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(~~6~~5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

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Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

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Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (~~2~~1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean

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energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

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Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period~~, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period~~.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

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Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair

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allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power

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Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

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Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

~~**Same**~~

~~(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.~~

[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

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Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1)** ~~The first~~**Each transfer of** ~~the~~**a regulatory asset or a portion of it either creates** ~~the~~**or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

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any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

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Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

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Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

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Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts ~~paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under]~~, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017* ~~and any related amounts; and~~; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d) ~~amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

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(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

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205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

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(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

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"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

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"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

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i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

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5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

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Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1,

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2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's interest in the investment asset.

Same

(4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

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Recovery from sub-meter consumers

(5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

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Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

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Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

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(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1) Each transfer of a regulatory asset or a portion of it either creates or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

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1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the

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investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

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Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017*; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d)

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

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ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 17:58:21
Attachment 1: image0d0a3f.JPG
Attachment 2: Proposed Alternative for Fair Allocation Calculation v2.docx
Attachment 3: Blackline -Fair Allocation Provisions - Proposed Alternative.pdf

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All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importance. We plan to follow up later this evening with a markup of the draft Bill that reflects these comments as well as a few drafting points.

<u>Major Issues</u>

1. It is critically important to have a definition of “transfer” that is broad enough. We

had a mark-up as did Stikemans. I prefer ours but the two are not really that far apart. I would suggest a call with Ashbourne, Hamilton and Feldman tonight or tomorrow to get consensus.

2. Section 6.1. The process for determining the rate for electricity under 6.1xx may not be workable or requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for every specified consumer, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, what authority do they have to determine these rates given prohibition under s. 78(2) of the OEB Act?

3. Section 8xx (2)(b) – delete “material” from last line of the paragraph – we probably don’t want to get into a dispute about whether a funding obligation was incurred in a manner that was in “material” conformity with the Financing Plan. In addition, as drafted, it would actually mean that if there were a material issue, the charge would be irrevocable, but if it was not material, then arguably the charge could be revocable.

[4. Section 10xx (1) – Will OPG, as Financial Services Manager, be able to determine the monthly clean energy adjustment?]

5. Prior Section 11xx (1), “The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor’s portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period” should be reinserted.

6. Section 13(2) gives the Minister the ability to replace the Financial Services

Manager. I think, because of section 17, this would mean that the Minister would have the ability to replace the FSM of an up and running financing entity. The Minister should not have that power. That power should only be exercisable by Debtholders. We had suggested bifurcating the role of the FSM for this purpose and limiting this replacement power to the purpose of preparing the Financing Plan. Perhaps another way of addressing this would be to have an explicit carve out to the effect that the Minister's rights will not extend to OPG's rights as FSM of a financing entity that has already issued funding obligations under section 17. This is also important in order to achieve the desired accounting treatment.

7. Section 15. The draft still has the FSM determining the fair allocation amount. This is OPG's issue of greatest concern. We are attaching a proposal prepared by OPG to suggest a compromise between our last mark up, which had the Minister assume full responsibility, and the latest draft Bill which leaves the responsibility fully on OPG.

8. In s. 16(5) the draft Bill still proposes to treat the Financing Plan as a confidential document. We believe that unless the Minister allows for disclosure of the Financing Plan we will not be able to satisfy disclosure obligations under securities laws.

9. s. 17(1) implies that the FSM may incur funding obligations itself. Is this a drafting error or is the intention to be building in flexibility so that OPG would be able to purchase the IESO funding shortfall itself in case OPG and the Dealers can't get a deal done quickly enough (impractical as that may be) ?

10. Section 22(2) still says that IESO does not retain any obligations in respect of the investment asset. This originally came from IESO and it should be dropped. It is incorrect. IESO does have obligations in respect of the investment asset. It has obligations in the Act and the regulations and it will have obligations in the master sale and servicing agreement.

11. Section 25xx (1) – delete references to "and recover amounts in respect of". Definition of clean energy adjustment already reflects that it is an amount and the financing entity should be entitled to the full clean energy adjustment.

12. Section 38 of our previous markup had a provision for “Standing and Remedies” of a financing entity which was derived from the OBCA and we believe it would be a serious gap not to have that.

Minor Points

13. The definition of clean energy initiative now appears to be narrower than the intentions seemingly expressed by the revised preamble. It should be revised accordingly.

14. The definition of “refinancing” doesn’t work because it no longer requires replacing old funding obligations with new funding obligations.

15. Section 6. For the purposes of the definition of “RPP rate” in 6xx, it should be recognized that this is not a single rate established by the OEB. Rather, OEB establishes a number of RPP prices under the relevant clause. There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. If this has not been considered, it will be important to determine how this affects the rest of the drafting and the ability to calculate the necessary amounts that depend on the “RPP rate”.

16. s. 9(2) does not expressly address how these errors would be dealt with. It would be nice to specify that they would be corrected pursuant to the true up procedure in 10(3).

17. I don’t think “fair adjustment” is defined anywhere anymore. In any event, I think sections 15(1)2 and 16(4)(b) are still adding dollar amounts to the fair adjustment, which I think is an adjustment to a rate ($/Kwh). I am not sure what is meant by “value of an fair adjustment” – is this supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers ? It is not clear.

18. Section 15(2)3 still refers to time value of money or rate of inflation instead of actual financing charges on the funding obligations, which is the real factor that would have to be taken into account.

19. Changes to section 53.1 of the Electricity Act are behind our mark-up.

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Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI) <Carolyn.Calwell@ontario.ca>; Myers, Jonathan <jmyers@torys.com>; Suzie Gignac (suzie.r.gignac@ca.ey.com) <suzie.r.gignac@ca.ey.com>; Blake Langill (blake.w.langill@ca.ey.com) <blake.w.langill@ca.ey.com>; LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; mouche1961@gmail.com; Martine Band (Martine.Band@oeb.ca) <Martine.Band@oeb.ca>
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)

Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and

keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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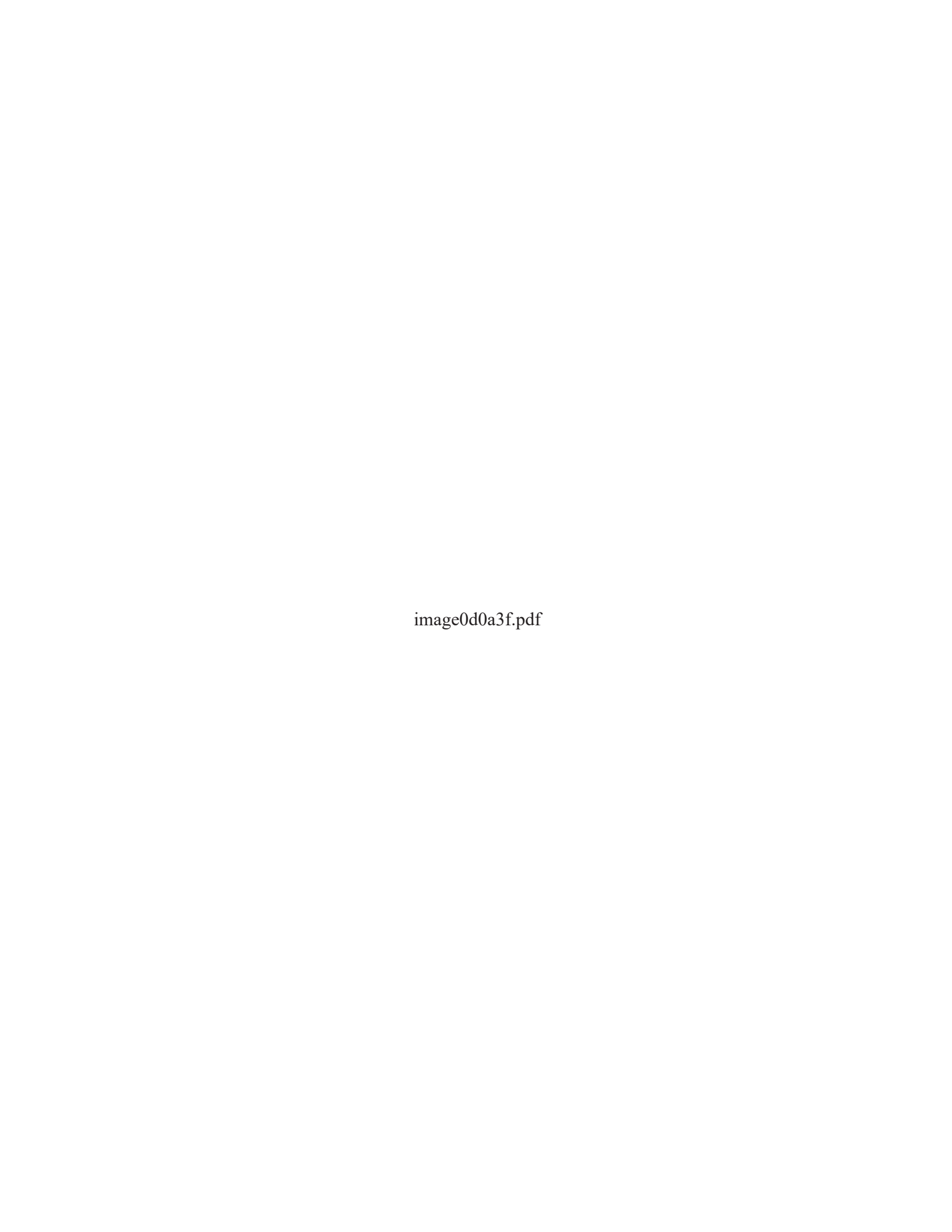
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Proposed Alternative for Fair Allocation Calculation v2.pdf

FAIR ALLOCATION AMOUNT

Minister to prepare initial calculation of fair allocation amount

15xx. (1) The Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The Minister shall calculate a fair allocation amount in respect of each reference period by the date that is **[20]** business days after the day this Act receives Royal Asset.

Certification

(1.2) The Minister shall certify to the Financial Services Manager the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Minister or the Financial Services Manager, as applicable, shall have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The Minister or the Financial Services Manager, as applicable, shall calculate a fair allocation amount in accordance with such methods as the Minister or Financial Services Manager, as applicable, considers appropriate, having regard to the requirements of this Act.

Provision of updates to Minister

(4) The Financial Services Manager shall provide the Minister written notification of any updates to the calculation the fair allocation amount made pursuant to subsection (1.3).

Effective date

(5) The fair allocation calculation or an amendment the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

Blackline -Fair Allocation Provisions - Proposed Alternative.pdf

FAIR ALLOCATION AMOUNT

~~Financial Services Manager to calculate~~Minister to prepare initial calculation of fair allocation amount

15xx. (1) The ~~Financial Services Manager~~Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The ~~Financial Services Manager~~Minister shall calculate a fair allocation amount in respect of each reference period ~~before any funding obligation is incurred [by a financing entity during the reference period]~~by the date that is **[20]** business days after the day this Act receives Royal Asset.

Certification

(1.2) The Minister shall certify to the Financial Services Manager the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(~~1.2~~1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Minister or the Financial Services Manager, as applicable, shall ~~[comply with the regulations and]~~ have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The Minister or the Financial Services Manager, as applicable, shall calculate a fair allocation amount in accordance with such methods as the Minister or Financial Services Manager, as applicable, considers appropriate, having regard to the requirements of this Act.

~~Notification~~Provision of updates to Minister

(4) The Financial Services Manager shall ~~notify~~provide the Minister ~~of the methods used to calculate~~written notification of any updates to the calculation the fair allocation amount ~~and any changes to those methods~~made pursuant to subsection (1.3).

Effective date

(~~6~~5) The fair allocation calculation or an amendment ~~to~~ the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided ~~to the Minister in writing~~by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

Document comparison by Workshare Compare on Wednesday, April 26, 2017 5:47:46 PM

Input:	
Document 1 ID	file://\\Catou-ogfspuwss\217803$\G\Les Wong's Documents\Fair Hydro Plan\Legislation\Excerpt - Fair Allocation Section of April 26 Draft Legislation.docx
Description	Excerpt - Fair Allocation Section of April 26 Draft Legislation
Document 2 ID	file://\\Catou-ogfspuwss\217803$\G\Les Wong's Documents\Fair Hydro Plan\Legislation\Proposed Alternative for Fair Allocation Calculation v2.docx
Description	Proposed Alternative for Fair Allocation Calculation v2
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	30
Deletions	13
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	45

RE_ Ontario Fair Hydro Plan.rtf

From: Kacaba, Jennifer (ENERGY) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]; Martine Band (Martine.Band@oeb.ca) [Martine.Band@oeb.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
Attachment 1: Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

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Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice

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amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

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Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

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Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

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Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

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FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

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Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

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PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

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Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

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Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

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except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

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Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Confidential Draft

RE_ Ontario Fair Hydro Plan.rtf

From: Alan Hibben [alan.hibben@rogers.com]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; "MCAULEY Tyler -LAWDIV" [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; 'Nevison, Gary' [Gary.Nevison@tdsecurities.com]; 'Thom, Trevor' [Trevor.Thom@tdsecurities.com]; 'Akman, Steven' [Steven.Akman@tdsecurities.com]; 'Thompson, Susan' [Susan.Thompson@tdsecurities.com]; 'Manii, David' [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; 'Kim Marshall' [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; 'Suzie Gignac' [suzie.r.gignac@ca.ey.com]; 'Blake Langill' [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Friday, April 21, 2017 11:33:55

I have a couple of comments. I apologize in advance that I have not been able to keep up with al the drafting and other decisions, so to the extent that these elements have already been agreed by OPG, I apologize.

1. "Clarification with respect to regulations" should refer to "any proposal to make ***or amend*** a regulation"

2. "Average baseline rate" is this calculated **before** the announced HST rebate?

3. "Fair Adjustment May 1, 2018 to April 30, 2022" – would like to make sure that the regulations allow for a pass-through of interest on investment assets in this time period.

4. "Principles of fair adjustment" why does this refer to the time value of money rather than funding costs of the investment assets?

5. "Fair Allocation Plan" this is still in the document, but now without any use or definition . Is this a holdover? Would be good to get rid of the concept completely

6. "Estimated funding amount" should include original issue discount (if any)

From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]

Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; 'Feldman, Michael' <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Hill, Krista' <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; 'Mansoori, Nina' <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; 'Emes, Aaron' <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; rramchandani@torys.com
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Subject: RE: Ontario Fair Hydro Plan

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28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

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Counsel

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Ministries of Energy / Economic Development & Growth /

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: RE: Ontario Fair Hydro Plan

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Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com);

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RE_ Ontario Fair Hydro Plan.rtf

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CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]
Subject: RE: Ontario Fair Hydro Plan
Date: Thursday, April 20, 2017 17:58:41
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

---

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Sent: April 17, 2017 12:00 PM

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

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A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

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EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
Attachment 1: image001.jpg
Attachment 2: SETOR1-#6709178-v8-Fair_Hydro_Plan_-_Issues_to_be_Addressed.doc

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Monday, April 17, 2017 12:10 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Persaud, Donnie - Debt Capital Markets'; Hill, Krista; 'Turnbull, Vickie'; 'Dal Bello, David'; Mansoori, Nina; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); Glenn Zacher; 'O'Brian, Adam'; Emes, Aaron; Peter Hamilton; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
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Subject: RE: Ontario Fair Hydro Plan

All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

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Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We

suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

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Intergenerational Fairness in Hydro Rates Act, 2017 (draft)

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. In our view, recovery by the IESO should be determined by OEB in accordance with the regulations and/or the Fair Allocation Plan. To this end, the IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act, with such necessary OEB accounting order.

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall. (1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits: 1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. 2. No part of the funding shortfall shall be recovered before May 1, 2022. (2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment. 22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. (2) The Ontario Energy Board may, in accordance with the regulations, by	22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.] NTD: to the extent qualification as a regulatory asset is an accounting judgment there may be little value in attempting to dictate that result by statute. However, the use of a defined term "regulatory asset" for other purposes is fine. Is the intent that Sections (1.1)(1) and (1.1)(2) would limit the recovery rights of the Investment Asset Owner or just the IESO in respect of the regulatory asset. Any material express limitation or condition attached to the IESO right of recovery based on the fair allocation plan is likely to be problematic as impairing the effective right of recovery. If this is the result then IESO may be treated as an equity holder and may not be able to recognize the regulatory asset. In addition, Section (1.1) 1 appears to reintroduce the concept that IESO's

order specify how the IESO funding shortfall must be recorded.	funding shortfall amount ranks subsequent to the clean energy adjustment amount such that the recovery of the IESO's funding shortfall in a reference period is limited to whatever space is left under the fair allocation curve. . If the right to record the shortfall is subject to an OEB order, that order may need to be obtained in advance This language and structure may not be definitive enough to provide for a real right of recovery of any regulatory asset amount held by the IESO. The statute should provide that the IESO be required to record the funding shortfall in a variance account (without having to obtain OEB approval) and that the OEB be required, as prescribed by regulation, to provide for recovery of the variance amounts recorded - presumably the regulation could provide when, after 2022, and in what manner (i.e., over what period of time) the IESO can recover any regulatory asset amount. OEB, by accounting order, would establish an IESO [fair hydro] variance account and indicate what IESO shortfalls may be included in it. The OEB is not approving each funding shortfall. The OEB's role in recovery would be to include the funding shortfall variance in future prices so IESO may recover it. In Section 6, OEB also needs to continue to determine what RPP price would have been payable but for the price set by Section 6. This is needed so LDCs know what amount would have been invoiced, so IESO in turn, based on information provided by LDCs, can determine the funding shortfall.

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.	Note that Section 7 restricts prices increases to inflation forever. We suggest redrafting this to delete "for inflation" in paragraph 2. Section 8.2 is unclear with respect to what limits cannot be exceeded. It introduces uncertainty with respect to the IESO right to record a shortfall and the IESO right of recovery. It may therefore prejudice the accounting treatment.

2. In our view, the IESO should become and remain the owner of a distinct asset, defined as the Regulatory Asset. Upon a "transfer" of all or a portion of this Regulatory Asset, the Investment Asset owner acquires an Investment Asset. On this construct the IESO is not a co-owner with the Investment Asset owner of an asset, the IESO's portion of which is the Regulatory Asset and the Investment Asset's owners potion of which is the Investment Asset. The IESO, based on conversations with KPMG, believes that it obtains a better result from an accounting perspective if it owns a distinct asset, as opposed to a co-ownership interest which is likely to be treated as a residual or subordinated interest.

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan. 23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	NTD: The IESO right to transfer should not be subject to compliance with the Financing Plan. Consider corresponding amendment to Section 8.1 (1.1) so that the Fair Allocation Plan and the Financing Plan do not limit the ability of the IESO to transfer, or collect in respect of, a Regulatory Asset which has already arisen.

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that is not deemed to be an investment asset**; "investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x;	23. The IESO may, from time to time, transfer all or any portion of the regulatory asset. Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies. Any such transfer shall be without recourse to the IESO and upon any such transfer the IESO (or any person claiming through the IESO) shall have no further right, title or interest in (except as express provided herein) or any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment asset. "regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that has not been transferred**; "investment asset" the investment asset established under section x;

3. We think that further particulars will be required in relation to the definition of the Funding Shortfall. Therefore we would add reference to "as prescribed by regulations" to address the need to provide for any variance/true up. We also need regulations to address recovery of IESO funding costs (which at moment legislation does not address).

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: 1. The sum of all invoice amounts issued to specified consumers for the month. 2. The sum of all invoice amounts that would have been issued to	22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period in accordance with the regulations. NTD: We think that the reference to a "reference period "is unnecessary. Alternatively make provision for the addition or subtraction of additional amounts as further prescribed by

specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply. (2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.	regulations.

4. For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. That terminology implies the transfer of property from one person to another. First, there remains uncertainty at law (even with the revised "fishing licence language") with respect to the whether the Investment Asset acquired by the Investment Asset Owner is property. Second, there is a higher level of uncertainty with respect to whether the Regulatory Asset is property, given that the Regulatory Asset does not have the same level of certainty of recovery as does the Investment Asset, and lacks some of the ancillary rights attached to the Investment Asset. Third, even if both the Regulatory Asset and the Investment Interest constitute property, there is a continuity gap between them since the rights acquired by the Investment Owner are different from the rights disposed of by the IESO.

We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.

"transfer" means an assignment, conveyance, disposition or sale.	"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a result, constitute a named person the owner of an investment asset under this Act and (ii) in relation to an investment

	asset or any portion thereof …., and, in each case, transferred shall have a corresponding meaning.
25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.	Probably unnecessary, at least in relation to the Regulatory Asset, because of the effect given to a transfer of the Regulatory Asset in Section 23. In any event, because of the differences in the definition of "transfer" and because discontinuity is an issue for the Regulatory Asset but not for the Investment Interest, we would suggest that there be separate provisions dealing with the transfer of the Regulatory Asset and the Investment Interest.
(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.	NTD: not sure that there is any value in deeming a transfer to be absolute.
(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.	NTD: Perfection not likely relevant. Transfer should be free of any adverse claim.

5. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. (2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations. (3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.	(4) The IESO shall not be liable to the Investment Asset Owner, any pledgee, or any person claiming through the Investment Asset Owner or any pledgee, for any failure to collect or remit, or any other breach or failure to perform, by any electricity vendor. Do we need to address the very limited circumstance of the IESO as an electricity vendor? Section 13x(1) does not appear to contemplate a volumetric rate, but rather the LDC determining a fixed amount payable by each of its consumers.

6. For constitutional reasons related to the federal bankruptcy power, limit the unnecessary use of "deeming provisions".

Section 15x (2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.	(2) The amounts deposited into the account, until paid in accordance with this Act and the regulations, shall be held in trust by the applicable electricity vendor for the investment asset owner.
Section 12 (2) The amounts collected are deemed to be held in trust for the investment asset owner.	(2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with this Act and the regulations shall be held in trust by the IESO for the investment asset owner.
23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	…Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies and the IESO (or any person claiming through the IESO) has no further right, title or interest in the portion of the regulatory asset transferred, or in the corresponding investment asset.
Section 25 (3) At the time a transfer of a regulatory	Delete, see new Section 23.

asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	
"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")	"investment asset" the investment asset established under section x;
"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset;	"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that has not been transferred;

7. Does the clean energy adjustment determine the amount payable in respect of both the Regulatory Asset and the Investment Asset? If so, any subordination or other arrangement that results in the IESO receiving a residual interest may impact de-recognition. In our view, this calculation should exclude the IESO, and the IESO should have a separate right of recovery assessed by the OEB.

"clean energy adjustment" means…	Should specify that this is the amount required by the Investment Asset Owner and does not relate to IESO's right of recovery. Consistent with this, Schedule 1 is defined in relation to the funding and other costs of the owner of the investment asset.
11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified	Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy

consumers. (2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment. (4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.	adjustment for a reference period.

8. In order to ensure that the Disposition results in the de-recognition of the "regulatory asset" on IESO's books (and that the Disposition not be treated as a financing transaction) it is important the Disposition) by IESO to the financing trust be without recourse to IESO and that all collection obligations on the part of IESO be on a reasonable efforts, or consistent efforts, basis only. Therefore, clarify that the IESO's trust and remittance obligations are limited to amounts actually received by it. IESO's obligation to segregate and remit should be conditional upon receipt of the corresponding amounts from the electricity vendors.

Section 12 (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). (2) The amounts collected are deemed to be held in trust for the investment asset owner.	Section 12 (4) The IESO shall promptly deposit all amounts received by it from electricity vendors pursuant to Section x into the account established under subsection (3.1). (2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.	this Act and the regulations shall be held in trust by the IESO for the investment asset owner. (5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations. Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy adjustment for a reference period.

9. Daily remittances are not consistent with the operation of the system and may not be practical. At the very least, this should be left open to be addressed in the commercial documents.

Section 12x (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1).	Define "promptly", or provide that it is to be specified in the Regulations. The invoicing contemplated by section 12(2) regulations should be done based on IESO's monthly settlement process. It would appear that this is the case; section 13(1) references LDCs determining clean energy adjustment on a monthly basis. (4) contains a Note about considering daily segregation or remittances. IESO does not believe daily remittances are necessary. Daily remittances would add additional complexity and cost to the settlement process. It is not clear that LDCs would be able to move to daily remittances without substantial cost and effort.

	The risk of a particular LDC going bankrupt is small. If an LDC does go bankrupt, daily remittances merely minimizes risk of a month of remittances for that one LDC, which the Financing Entity can recover in a future period in any event through the True Up.

10. Consider the extent to which deeming provision are required in connection n with the operation of the PPSA. The number of deeming provisions raises the issue of whether the security interest provided for is one provided for by statute or one provided for by the PPSA. For the most part, once the application of the PPSA is provided for, the perception, priority and proceeds rules in the PPSA ought to be allowed to operate (and should not prejudice the transaction).

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.	Use PPSA term "security interest"
(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.	Redundant. In any event, the reference to set-off is not relevant or appropriate. Why not use PPSA terminology.
(3) The pledge may be made to secure a funding obligation **and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.**	Redundant and may prejudice the conclusion that a conventional PPSA security interest is intended,
(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider

(x) A pledge perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.	whether that can or should be done. Redundant, the priority rules in the PPSA should be sufficient,
(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act. (9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted. (10) The person to whom the pledge has been granted shall have a perfected	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.

security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.	

11. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated.

14x. (1) This section applies if, (a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and (b) the amount paid is less than the total amount payable. (2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. (3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.	Correct.

12. In order not to impair the ability of the IESO to dispose of its interest in the Regulatory Asset and in order not to impair the financibility of the Investment Interest by the Trust, subsequent actions and compliance with allocation plan and

the financing plan should not be a condition of the effectiveness of any aspects of the transaction.

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.	(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a **transfer, funding obligation or grant of a security interest** that was effected or incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

13. Provide legislative basis for provision of commercial undertakings of the sort which may be required for purposes of h financial close.

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 would be amended by adding the following clauses: (q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)]; (q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities; (q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include, (i) incurring liabilities in relation to the regulatory asset (ii) transferring the regulatory asset to [any special purpose financing	Retain specific objects but add a general object "to engage in activities to facilitate the implementation of the Fair Hydro Act, including:…" NTD: incorporate the expanded

entities established under (name of new Fair Hydro Act?)];	definition of "transfer"
(iii) transferring the regulatory asset to third parties;	NTD: "and the "transfer thereof"
(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];	NTD: consider need a for authority to enter into, if required, underwriting agreements and sign offering documents
	NTD: Consider need for exemption under *Collections Agencies Act*.

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 10:39:40
Attachment 1: image5ddddd.JPG

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an

asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and

ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG’s perspective.

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:53:33
Attachment 1: imagec5fcbe.JPG
Attachment 2: Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).DOCX
Attachment 3: Blackline - Fair Hydro Plan Act (Torys comments).pdf

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All,

Further to Michael's email, please find attached a mark-up of the draft Bill containing OPG and Torys' consolidated comments. Please note that this draft remains subject to the continuing review of OPG.

Thanks,

Brett

Brett Saulnier

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Subject: RE: Ontario Fair Hydro Plan

All,

As requested, we set out below a list of major and minor issues compiled by Torys, Hunton and Williams and OPG. These are ordered as they arise in the Bill, not in the order of importance. We plan to follow up later this evening with a markup of the draft Bill that reflects these comments as well as a few drafting points.

Major Issues

1. It is critically important to have a definition of "transfer" that is broad enough. We had a mark-up as did Stikemans. I prefer ours but the two are not really that far apart. I would suggest a call with Ashbourne, Hamilton and Feldman tonight or tomorrow to get consensus.

2. Section 6.1. The process for determining the rate for electricity under 6.1xx may not be workable or requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for every specified consumer, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, what authority do they have to determine

these rates given prohibition under s. 78(2) of the OEB Act?

3. Section 8xx (2)(b) – delete “material” from last line of the paragraph – we probably don’t want to get into a dispute about whether a funding obligation was incurred in a manner that was in “material” conformity with the Financing Plan. In addition, as drafted, it would actually mean that if there were a material issue, the charge would be irrevocable, but if it was not material, then arguably the charge could be revocable.

[4. Section 10xx (1) – Will OPG, as Financial Services Manager, be able to determine the monthly clean energy adjustment?]

5. Prior Section 11xx (1), “The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor’s portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period” should be reinserted.

6. Section 13(2) gives the Minister the ability to replace the Financial Services Manager. I think, because of section 17, this would mean that the Minister would have the ability to replace the FSM of an up and running financing entity. The Minister should not have that power. That power should only be exercisable by Debtholders. We had suggested bifurcating the role of the FSM for this purpose and limiting this replacement power to the purpose of preparing the Financing Plan. Perhaps another way of addressing this would be to have an explicit carve out to the effect that the Minister’s rights will not extend to OPG’s rights as FSM of a financing entity that has already issued funding obligations under section 17. This is also important in order to achieve the desired accounting treatment.

7. Section 15. The draft still has the FSM determining the fair allocation amount. This is OPG’s issue of greatest concern. We are attaching a proposal prepared by OPG to suggest a compromise between our last mark up, which had the Minister assume full responsibility, and the latest draft Bill which leaves the responsibility fully on OPG.

8. In s. 16(5) the draft Bill still proposes to treat the Financing Plan as a confidential document. We believe that unless the Minister allows for disclosure of the Financing

Plan we will not be able to satisfy disclosure obligations under securities laws.

9. s. 17(1) implies that the FSM may incur funding obligations itself. Is this a drafting error or is the intention to be building in flexibility so that OPG would be able to purchase the IESO funding shortfall itself in case OPG and the Dealers can't get a deal done quickly enough (impractical as that may be) ?

10. Section 22(2) still says that IESO does not retain any obligations in respect of the investment asset. This originally came from IESO and it should be dropped. It is incorrect. IESO does have obligations in respect of the investment asset. It has obligations in the Act and the regulations and it will have obligations in the master sale and servicing agreement.

11. Section 25xx (1) – delete references to "and recover amounts in respect of". Definition of clean energy adjustment already reflects that it is an amount and the financing entity should be entitled to the full clean energy adjustment.

12. Section 38 of our previous markup had a provision for "Standing and Remedies" of a financing entity which was derived from the OBCA and we believe it would be a serious gap not to have that.

<u>Minor Points</u>

13. The definition of clean energy initiative now appears to be narrower than the intentions seemingly expressed by the revised preamble. It should be revised accordingly.

14. The definition of "refinancing" doesn't work because it no longer requires replacing old funding obligations with new funding obligations.

15. Section 6. For the purposes of the definition of “RPP rate” in 6xx, it should be recognized that this is not a single rate established by the OEB. Rather, OEB establishes a number of RPP prices under the relevant clause. There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. If this has not been considered, it will be important to determine how this affects the rest of the drafting and the ability to calculate the necessary amounts that depend on the “RPP rate”.

16. s. 9(2) does not expressly address how these errors would be dealt with. It would be nice to specify that they would be corrected pursuant to the true up procedure in 10(3).

17. I don’t think “fair adjustment” is defined anywhere anymore. In any event, I think sections 15(1)2 and 16(4)(b) are still adding dollar amounts to the fair adjustment, which I think is an adjustment to a rate ($/Kwh). I am not sure what is meant by “value of an fair adjustment” – is this supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers ? It is not clear.

18. Section 15(2)3 still refers to time value of money or rate of inflation instead of actual financing charges on the funding obligations, which is the real factor that would have to be taken into account.

19. Changes to section 53.1 of the Electricity Act are behind our mark-up.

Michael K. Feldman

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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be

proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act,

2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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TORYS
LLP

Fair Hydro Plan Act (April 26 2017) Consultation v4 (Torys Comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the amount of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998* **[NTD: As payments made under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph]**, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 25xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." or "OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation, as may be further prescribed; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") **[NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment asset, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the

Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive, on a monthly basis an invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different

proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice from an electricity vendor that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty

(a) each clean energy adjustment is considered to be consistent with the fair allocation amount; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was in conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the sum of the estimated finance amount and the other cost amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced by electricity vendors to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Minister to prepare initial calculation of fair allocation amount

15xx. (1) The Minister shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The Minister shall calculate a fair allocation amount in respect of each reference period by the date that is **[20]** business days after the day this Act receives Royal Assent.

Certification

(1.2) The Minister shall certify to the Financial Services Manager the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(1.5) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Minister or the Financial Services Manager, as applicable, shall have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

ii. The expected number of specified consumers in respect of each reference period.

iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The Minister or the Financial Services Manager, as applicable, shall calculate a fair allocation amount in accordance with such methods as the Minister or the Financial Services Manager, as applicable, considers appropriate, having regard to the requirements of this Act.

Provision of updates to Minister

(4) The Financial Services Manager shall provide the Minister written notification of any updates to the calculation of the fair allocation amount made pursuant to subsection (1.3).

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation by the Minister takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister.

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment asset in accordance with this Act or for purposes of refinancing a funding obligation.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Amendments to plan

(5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(2) The Financial Services Manager shall cause financing entities to incur funding obligations only in material conformity with the applicable Financing Plan.

Same

(3) For greater certainty, subsection 17xx (4) applies despite the failure of the Financial Services Manager to comply with subsection (2).

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) Each transfer of a regulatory asset or a portion of it either creates or increases the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor and IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment interest owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, Ontario Power Generation Inc. or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(A) incurring liabilities in relation to the regulatory asset;

(B) transferring the regulatory asset for consideration; and

(C) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries (other than, for greater certainty, such a subsidiary that is that financing entity); and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity (other than, for greater certainty, such a subsidiary that is that financing entity).

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and any regulations made thereunder. **[NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Blackline - Fair Hydro Plan Act (Torys comments).pdf

Version 4

Torys/OPG Comments – April 26, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[NTD: Amend all references to the Fair Hydro Plan Act to reflect new name.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

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PART I
GENERAL

Interpretation
Definitions
1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the ~~value~~**amount** of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, ~~1998,~~**1998** [NTD: As payments made*

under 78.5 are not related to contracts, the lead-in language in (a) does not work for this sub-paragraph], and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

[NTD: This definition appears narrower than the intentions expressed by the revised preamble. Whereas the preamble now refers to investments in generation, transmission and distribution, this definition appears focused on generation and CDM. Consider revising it accordingly, particularly if intent of preamble is to leave flexibility for determining the basis of cost deferrals under this legislation.]

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined ~~in~~ under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~**25**xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." **or "OPG"** means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means~~, subject to the regulations,~~ **the incurrence of debt in connection with** a redemption, repayment or repurchase of a funding obligation**, as may be further prescribed**; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" ~~means [TBD]; ("French")~~**includes an assignment, conveyance, disposition or sale and, in relation to the regulatory asset or portion thereof, includes any act of**

IESO which is expressed by IESO to be a transfer of all or any portion of the regulatory asset for purposes of this Act; ("French") [NTD: It is important that this not be defined in an exhaustive manner, so that the common law definition of transfer is also maintained.]

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. **[NTD: If an invoice amount pertains to a different invoice period, then this should refer to the order of the Board then in effect and not to the order specifically in effect on April 30, 2017]**

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class]. **[NTD: Okay leaving this to the regulations.]**

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers ~~and reflect the fair allocation~~; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity **[NTD: "specified"?]** consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment ~~interest~~**asset**, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French") **[NTD: It should be recognized that this is not a single rate established by OEB. Rather, OEB establishes a number of RPP "prices" under 79.16(1)(b). There are time of use prices and tiered prices. Within each of these, there are several prices depending on time of day or volume consumed. It will be important to determine how this affects the rest of the drafting and the ability for the OEB to actually calculate the various RPP prices as contemplated.]**

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive**, on** a monthly **basis an** invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

[NTD: The process for determining the rate for electricity under 6.1xx may not be workable. It requires further clarification, as well as confirmation that the OEB is capable of making the necessary calculations. It appears that the rate under 6.1 is that which is required for a specified consumer to receive a monthly total bill that is 25% less than it would have been for them if the OEB determined RPP solely using the method under s. 79.16(1)(b). Though the determination of the comparison rate by OEB seems straightforward, it is not clear who determines the rates that are required for specified consumers to receive monthly total invoices that are 25% less

than they would have been. It appears that these rates may have to be determined on an individual consumer basis, or at least separately for the consumers of each electricity vendor. This is because a total bill for one consumer will have a different proportion of commodity vs. delivery and other charges than a total bill for another consumer. As such, it does not appear to be a single rate that the OEB can determine for all specified consumers, as this will not result in the necessary 25% reductions. If not the OEB, who is it? If it is the electricity vendors, they may not have the capability to make these calculations and do not appear to have authority to determine these rates given prohibition under s. 78(2) of the OEB Act]

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~**its** billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice **from an electricity vendor** that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty~~, subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment ~~was determined in a manner that was inconsistent with this Act~~**is considered to be consistent with the fair allocation amount**; and

(b) ~~whether the amount payable in respect of the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was ~~not~~ in ~~material~~ conformity with the Financing Plan. **[NTD: We think this approach is preferable as it does not contemplate inconsistencies with the Act.]**

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding **the sum of** the estimated finance amount **and the other cost amount** in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, other cost amount and true up amount

(2) The estimated finance amount, other cost amount and the true up amount shall be determined in accordance with the regulations.

[NTD: As agreed on a call with Finance Tax Policy, Scott Nelms and James Rehob on April 26, 2017, all taxes payable by a financing entity will be recovered from ratepayers. We propose that this be included as part of the "other cost amount".]

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced **by electricity vendors** to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. ~~(2)~~ **1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.** The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from

electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) **[NTD: "(5)"?]** and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) **[NTD: Incorrect cross-reference]** to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager**, provided that such termination will not affect the rights and obligations of the Financial Services Manager in respect of financing entities that have previously issued funding obligations**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

~~Financial Services Manager to calculate~~Minister to prepare initial calculation of fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of initial calculation

(1.1) The ~~Financial Services Manager~~**Minister** shall calculate a fair allocation amount in respect of each reference period ~~before any funding obligation is incurred [by a financing entity during the reference period]~~**by the date that is [20] business days after the day this Act receives Royal Assent**.

Certification

(1.2) The Minister shall certify to the Financial Services Manager **the initial calculation of the fair allocation amount for each reference period, including the assumptions, methodology, accuracy of information and numbers used in such calculation. The assumptions and methodology for such calculation shall be set out in the regulations.**

Financial Services Manager to update calculation

(1.3) For the reference periods commencing May 1, 2018, the Financial Services Manager shall prepare an updated calculation of the fair allocation amount in respect of each such reference period, as and when deemed necessary or appropriate by the Financial Services Manager but no less seldom and every five years, using the assumptions and methodology for such calculation set out in the regulations and updated information from the relevant parties. Any update to the fair allocation calculation shall be effective in accordance with subsections (4) and (5).

[NTD: OPG expects the method for the update calculation to be very prescriptive and set out in detail in the regulations. The regulations would also compel the IESO, OEB, LDCs and other relevant agencies to provide OPG with the necessary information to do the update calculation. OPG expects to use the model put together by the Province for the initial calculation and input the updated data from the agencies into the model to calculate the updated fair allocation amounts.]

Access to information

(1.4) The Minister shall make available, or cause to be made available, in a timely manner to the Financial Services Manager, all such information, including information from the IESO, the Board and electricity vendors, as requested by the Financial Services Manager to prepare updates to the calculation of the fair allocation amount.

Amount

(~~1.2~~**1.5**) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. **[A portion]** of the value of any fair adjustment that has been made under Part II in respect of any previous reference period. **[NTD: What portion needs to be specified? Also, if the "value of any fair adjustment" is supposed to be a monetary amount to match paragraph 1, then we think you need to better define the concept. It appears that you may be contemplating that this is supposed to be the monetary impact that the adjustment had when aggregated over all specified consumers. If this is the case then the language needs to be clarified.]**

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, **the Minister or** the Financial Services Manager**, as applicable,** shall ~~[comply with the regulations and]~~ have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

4. Such other principles as may be prescribed.

Method

(3) The **Minister or the** Financial Services Manager**, as applicable,** shall calculate a fair allocation amount in accordance with such methods as the **Minister or the** Financial Services Manager**, as applicable,** considers appropriate, having regard to the requirements of this Act.

~~Notification~~**Provision of updates to Minister**

(4) The Financial Services Manager shall ~~notify~~**provide** the Minister ~~of the methods used to calculate~~**written notification of any updates to the calculation of** the fair allocation amount ~~and any changes to those methods~~**made pursuant to subsection (1.3)**.

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation **by the Minister** takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided ~~to the Minister in writing~~**by the Minister to the Financial Services Manager. Any update to the fair allocation calculation prepared by the Financial Services Manager shall be effective 30 days after such update is provided to the Minister**.

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment ~~interest~~**asset** in accordance with this Act **or for purposes of refinancing a funding obligation**.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period~~. **[NTD: this deduction does not appear to be correct.]**

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference

period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

~~**Confidentiality**~~

~~(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:~~

~~1. The Financing Plan.~~

~~2. Reports referred to in subsection (3.1).~~

~~3. Any other document that would reveal information contained in the Financing Plan or the reports.~~

Amendments to plan

(~~6~~5) The Financial Services Manager may amend the Financing Plan at any time.

Same

(~~7~~6) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

Financing entities

17xx. **(1)** In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

(~~1~~2) The Financial Services Manager shall **cause financing entities to** incur funding obligations **only** in material conformity with the applicable Financing Plan.

Same

(~~2~~3) For greater certainty, subsection 17xx (~~5~~4) applies despite the failure of the Financial Services Manager to comply with subsection (~~1~~2).

~~**Financing entities**~~

~~(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.~~

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in~~, or any obligations in respect of,~~ the regulatory asset or in the investment asset created by the transfer. **[NTD: IESO will still have obligations under this Act and the regulations and by contract in relation to the investment asset.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment ~~asset~~**interest** owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) ~~The first~~**Each** transfer of ~~the~~**a** regulatory asset or a portion of it **either** creates **or increases** the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover ~~amounts in respect of~~ the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for ~~amounts in respect of~~ the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor **and IESO** to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment ~~of amounts in respect~~ of the clean energy adjustment. **[NTD: Reference to IESO to be added for purposes of its remittance obligations.]**

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the

investment ~~asset~~**interest** owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject

to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~ccount~~**account** of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to

collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, ~~OPG~~**Ontario Power Generation Inc.** or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998
[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

Standing and Remedies

39xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the Court of Appeal from any order made by the court under this section.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(~~iv~~**A**) incurring liabilities in relation to the regulatory asset**;**

(~~v~~**B**) transferring the regulatory asset for consideration; **and**

(~~vi~~**C**) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~**2017.**

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity **[NTD: "financing entity"?]** or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities **and performing other services on behalf of financing entities**, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a ~~special purpose~~ financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries **(other than, for greater certainty, such a subsidiary that is that financing entity)**; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity **(other than, for greater certainty, such a subsidiary that is that financing entity)**.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, ~~2017.~~**2017*** **and any regulations made thereunder. [NTD: This would make it a deemed condition of license for electricity transmitters too, but transmitters are not "electricity vendors" that need to comply with this Act.]**

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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Insertions	117
Deletions	68
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	189

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:36:02
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.jpg
Attachment 4: Compare - Fair Hydro Act - Osler Comments on v 4.pdf
Attachment 5: Fair Hydro Act - Osler Comments on v 4.docx

Please find attached Osler's most significant points on the revised draft. This remains subject to ongoing review by Osler and the Dealers and further comments may follow. In addition, a number of points from our mark-up on Sunday did not make it into this draft of the legislation and in the interests of time we have not marked them back up, but they remain outstanding.

Elliot

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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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Sent: April 17, 2017 12:00 PM
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Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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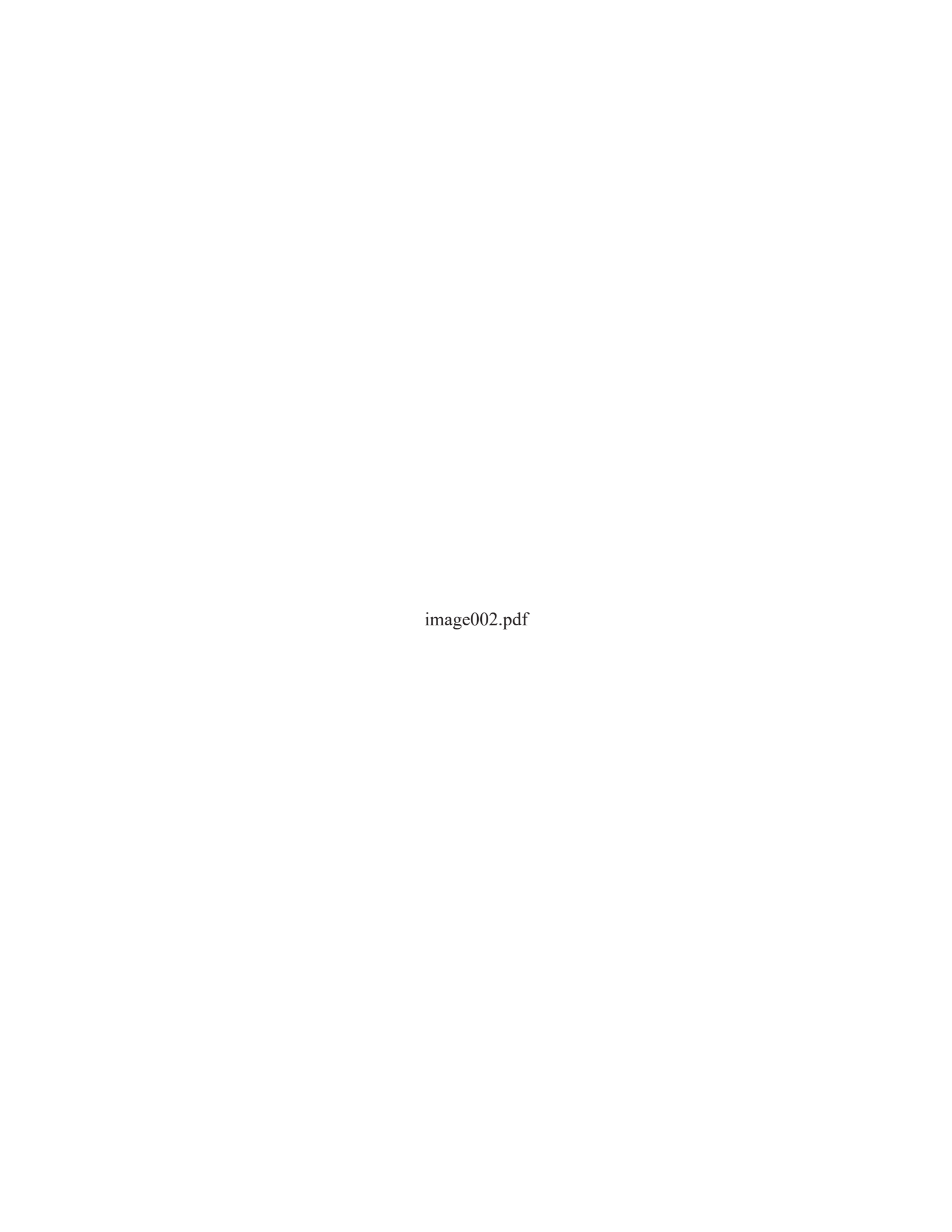
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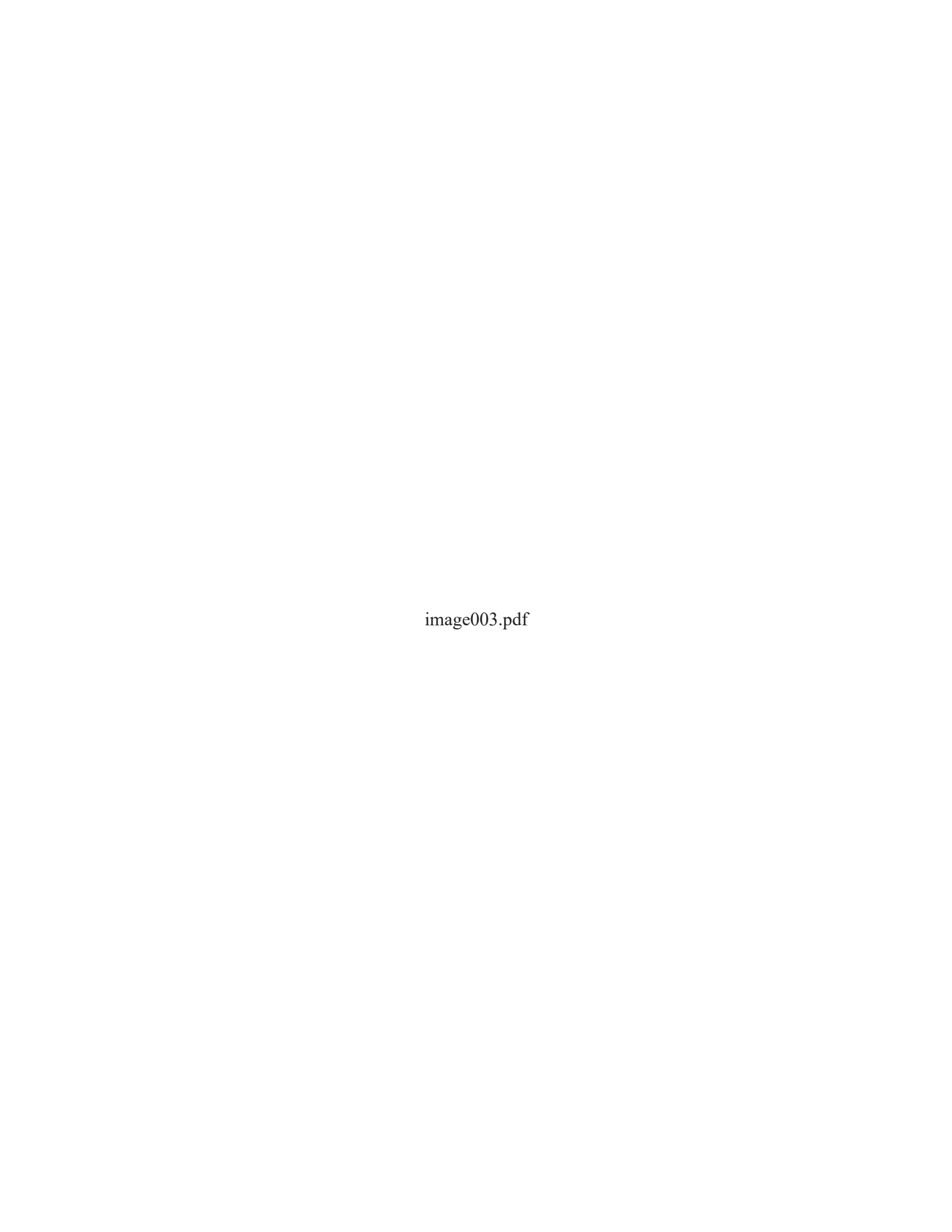
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2017
CANADA'S BEST
DIVERSITY EMPLOYERS

Compare - Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable]** **[NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) ~~The~~Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act. and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. ~~Any incurrence of a funding obligation should reasonably align with~~Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during ~~a~~each reference period will reasonably align with the fair allocation amount determined in respect of ~~the~~such reference period under this Part as ~~of~~estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not ~~be~~result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy**

adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario

Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) ~~Subject to any finding of [manifest error], a~~A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the

balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, ~~the regulatory asset or in~~ the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner ~~of the regulatory asset~~.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

~~**200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

~~**(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:**~~

~~(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and~~

~~(d)amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Fair Hydro Act - Osler Comments on v 4.pdf

Version 4 (Osler comments April 26, 2017)

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"finance amount" has the meaning given to it in the regulations. **[NTD: This will need to be defined, but this should be left to the regulations.]**

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation (including principal, interest, and other amounts payable in connection therewith) incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French") **[NTD: The Dealers concur with Stikeman's suggestion in Version 3 on how this should be defined.]**

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is **[25]** per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). **[NTD: By providing each specified RPP consumer with a 25% rate cut, instead of a proxy "representative consumer", there would need to be a unique RPP rate for each customer based on that customer's historical bill, taking into account the fixed and variable components, to generate the intended reduction. This does not seem administratively workable.]**

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: This would provide a 25% rate cut on top of the OEB's announced cut last week (since that rate would be the "comparison rate".]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The **[rate for electricity payable][NTD: Non-RPP customers do not pay an electricity rate, they pay HOEP. As drafted, this provision does not work.]** by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: We are concerned that this regime for non-RPP customers may not work, but have not had the opportunity to work through it.]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the preceding period, **[NTD: It is not clear that this could be done for the immediately preceding reference period, since rates are set before the start of a reference period (i.e. when rates are set for a reference period, it will be done before the immediately preceding reference period has ended. Accordingly, we would suggest being less specific so the details of how the true up is calculated can be worked out later.]**

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment in respect of a reference period and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) Without limiting the amount of the clean energy adjustment, the Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period. **[NTD: If the Board is doing anything other than a purely mathematical operation, this is problematic for financing. Given that this is qualified by the regulations, this clause would be acceptable if the regulations are sufficiently restrictive in what they specify.]**

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

3. Payments collected by the IESO pursuant to subsection 11xx(2).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment, including without limitation all amounts received under subsection 11xx(3) and all

proceeds of any such amounts, shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act, and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same invoice period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers including all proceeds of any such amounts shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners and, for greater certainty, any trust created by or established in accordance with this Act shall be a true trust and not a deemed trust.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager. **[NTD: If the Minister retains this power under the legislation, the documentation will need to restrict the Minister's right to change the Financial Services Manager without the lenders consent.]**

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts: **[NTD: This calculation still does not work. For example, it does not make sense to add estimated clean energy costs and estimated clean energy benefits together. This calculation is central to financeability since it drives the ability of interest obligations to become payable during the first 5 years (see s. 16xx(4)). Given how critical this calculation is to the overall regime, it should be moved to the regulations so it can be finalized later on in the process once the intent is better understood and all parties can confirm the final definition.]**

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Funding obligations should be incurred such that, along with any previously incurred funding obligations, the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during each reference period will reasonably align with the fair allocation amount determined in respect of such reference period under this Part as estimated at the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not result in amounts payable in respect of the clean energy adjustment during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].**[NTD: Due to refinancing of short term debt, there may be amounts that become payable, but do not result in a clean energy adjustment. These short-term amounts must be permitted to become payable during the first five year period so long as there is no CEA.]**

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties

arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) A recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time. **[The "subject to" language seems to invite a challenge. If the IESO makes an error, we would expect an adjusting entry would be made.]**

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. **[NTD: If IESO or an electricity vendor fails to hold funds in trust as required by this Act, an action for damages or another remedy should be available.]**

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[The amendments to the calculation of global adjustment in ss. 25.33 of the EA completely undermine the Fair Hydro Plan (i.e. this is a fatal flaw). By flowing this into GA, these costs/benefits would flow to all electricity consumers, not just "specified customers", and this approach results in double counting of costs/benefits since the amounts paid to/received from a financing entity have already found their way through global adjustment when the underlying cost was incurred by the IESO.]

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 18:15:17
Attachment 1: WSComparison__6714670_1-_6712834_3.pdf
Attachment 2: SETOR1-#6712834-v3-April_20_17_draft_FHP_from_Ministry.docx

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Please see attached the IESO/Stikemans comments.

Peter Hamilton
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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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Version 4

STIKEMAN COMMENTS/EDITS – APRIL 26/17

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Confidential Draft

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

Confidential Draft

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system ~~is~~will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

[1] FLS: please see the preamble of the *Green Energy Act, 2009*.

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Confidential Draft

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section ~~22~~24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

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"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act,

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a

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specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt ~~is~~its billing practices and invoices to reflect the new rates.

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Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

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Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges~~.~~]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was ~~inconsistent~~consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(~~4~~3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's ~~respective~~ interest in the investment asset.

Same

(~~5~~4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(~~6~~5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

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Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

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Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (~~2~~1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(~~3~~2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(~~4~~3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners ~~or a secured party to whom a security interest in an investment interest is granted under this Act~~.

IESO to remit

(~~5~~4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean

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energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

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Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period~~, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period~~.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

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Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair

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allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power

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Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

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Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

~~**Same**~~

~~(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.~~

[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

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Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1)** ~~The first~~**Each transfer of** ~~the~~**a regulatory asset or a portion of it either creates** ~~the~~**or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including

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any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

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Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

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Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

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Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts ~~paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under]~~, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017* ~~and any related amounts; and~~; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d) ~~amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.~~

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

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(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017.*

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205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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Version 4

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

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A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system will continue to be clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*

time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

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(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 24xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

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"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, the incurrence of debt in connection with a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

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"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

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i. The commodity price of the electricity used.

ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

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5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*. **[NTD: Is it necessary to more explicitly tie this to what the rate would have been in the absence of the govt's fair hydro plan since the OEB will set reduced RPP rates on May 1 under the current statute/regs]**

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). **[NTD: It is not clear what reduction is contemplated by this provision. It sounds like whereas RPP specified consumers are to receive a rate that will effect a 25% reduction to their total bill, non-RPP specified consumers will only be entitled to a rate that will effect a 25% reduction to the GA component of their bill. Or is the intent to reduce non-RPP specified consumers GA component by the $/kWh difference between the comparison rate and rate determined under subsection 6.1xx(1), i.e. a rate reduction factor?]**

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

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Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt its billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1,

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2018 and ending on April 30, 2022. **[NTD: we understand that the intent is to gradually smooth increases after 2022 by continuing the IESO's under-recovery/shortfall after 2022, albeit at a reduced level. If correct, this part of the Act would need to be further amended to provide authority to do this. Would also need to be reflected in the IESO funding shortfall provisions.]**

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, [which may include terms relating to late payment fees and interest charges]. **[NTD: query whether such late payment/interest fees would be applicable to the CEA amount and/or whether would be better to leave to regs]**

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was consistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(3) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's interest in the investment asset.

Same

(4) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

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Recovery from sub-meter consumers

(5) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount, which may be a positive or negative value, shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

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Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (1) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(2) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners.

IESO to remit

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the accounts referenced in subsection (2) to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

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Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

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(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month commencing May 1, 2017 shall be determined by the IESO in accordance with the regulations. **[NTD: Does Act need to provide for recovery retroactive to May 1/17 prior to effective date of the new rate]**

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO funding shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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[NTD: suggest moving to s 24xx(2)]

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. **(1) Each transfer of a regulatory asset or a portion of it either creates or adds to an investment asset. [NTD: does not make sense to refer to a first transfer as may transfer to multiple entities, so there is more than one first transfer]**

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

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1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the

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investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

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Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

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[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts, as may be prescribed, paid or incurred by the IESO related to the *Ontario Fair Hydro Plan Act, 2017*; **[NTD: we understand the purpose of this section is to provide another avenue of recovery for amounts that would not otherwise be recovered as part of the IESO funding shortfall under Part V]**

(d)

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017,* or

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ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017.*

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:38:52
Attachment 1: Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the

Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

Confidential Draft

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor,

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

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2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity used.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

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iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or other prescribed entity, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rate determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rate is commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is subject to the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) The rate for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice

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amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2).

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*.

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force.

Specified consumers (non-RPP), first fair adjustment

6.2xx The rate for electricity payable by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1).

Determination by Board

6.3xx The Board shall determine the rates mentioned in sections 6.1xx and 6.2xx no later than seven business days after the day this section receives Royal Assent.

Implementation of rates

6.4xx Each electricity vendor, [specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer] shall, no later than seven business days after the day on which the Board determines the rates under section 6.3xx, adapt is billing practices and invoices to reflect the new rates.

Effective date

6.5xx The rates determined under section 6.3xx are effective on the earlier of the following days:

1. The first day of the month immediately following the last day of the seven-day period referred to in section 6.4xx.

2. July 1, 2017.

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Transition

6.6xx (1) This section applies if an electricity vendor, specified consumer or unit sub-meter provider is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven days between the day of the Board's determination of rates under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor, specified consumer or unit sub-meter provider shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and

(b) ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate determined by the Board receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

Sub-meter customers

7.1xx A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

Recovery from sub-meter consumers

(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

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Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed.

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment in respect of the reference period.

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

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1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations.

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period.

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Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

Financial Services Manager

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section 10xx.

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

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FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.

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3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

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Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

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1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement.

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

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PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

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Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act.

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

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Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property,

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except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ccount of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of

[5] FLS - see s. 51 of the Electricity Act, 1998

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.

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the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*
[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998]*.

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

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Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act is amended by adding the following subsection:

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Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Thursday, April 20, 2017 17:58:41
Attachment 1: Fair Hydro Plan Act (April 20 2017) Consultation v3.docx

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All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM

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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

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Fair Hydro Plan Act (April 20 2017) Consultation v3.pdf

Version 3

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Confidential Draft

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable phasing out of coal fired generation, modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom,[2] and conservation and demand management.

The Government of Ontario is committed to ensuring that the costs of these investments, and the raising of money to fund the investments,[3] are allocated fairly among present and future generations of consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits determined to be derived by the specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs; ("French")

"clean energy costs" means, in respect of a reference period, the value of the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated costs to be incurred by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management, including storage,

(iii) energy efficiency,

(iv) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(v) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

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(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the determination of the rate payable for electricity in accordance with Part II; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section **]; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the investment asset created as described in section 22xx; ("French")

"investment asset owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

[4] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"investment interest" means an ownership interest in the investment asset, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment asset owner by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

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(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada);

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

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iii. A rate rider.

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Transfer

(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the IESO purports to dispose of its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.

Effect of invalidity, etc.[5]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[6]

[5] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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(a) to ensure that clean energy costs are fairly allocated among specified consumers over time and that the process by which the Province raises money to fund the costs reflects the fair allocation; and

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding financial commitments, financial arrangements, indemnities or similar transactions.

PART II
FAIR ADJUSTMENT

[6] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

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Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by the specified consumer, by an agent of the specified consumer or by a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive a monthly invoice amount that is 25 per cent less than the average baseline invoice amount.

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate mentioned in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination.

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Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the applicable rate receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

8xx. (1) Upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the investment asset owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

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Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

9xx. (1) The amount of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed.

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1.

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

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i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

ii. variations in billings due to variations in electricity consumption.

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period.

IESO to collect

(2) The IESO shall, as an agent of the investment asset owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those accounts:

1. Amounts described in subsection 12 (4).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (6), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment asset owners in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the

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applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect the difference from specified consumers.

Electricity vendor to invoice specified consumers

12xx. (1) The electricity vendor shall issue an invoice to each specified consumer for the consumer's amount of the clean energy adjustment in accordance with the regulations.

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment asset owners, collect the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment asset owner in accordance with subsection (5), be held in trust for the investment asset owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (5) to the IESO for the benefit of the investment asset owners or secured parties in accordance with the regulations.

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Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.]

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment asset owner.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

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2. Providing information to electricity vendors, including the IESO, in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3).

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Financial Services Manager shall have regard to the following principles:

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1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected electricity consumption rates for each reference period.

Allocation of fair adjustment

(3) If, before the Financial Services Manager has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period.

Amendments to the fair allocation calculation

(4) The Financial Services Manager may amend the fair allocation calculation from time to time, as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Submission of fair allocation to Minister

(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

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Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred or potential transfers should be made for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period.

2. Incurrences and transfers should be implemented in a manner that, as the Financial Services Manager considers to be reasonable, is cost effective and reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period].

Confidentiality of plan

(4) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).

Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Fair Allocation Plan

(4) No funding obligation incurred and no transfer made by the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X.

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PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order to authorize the IESO to do the following:

1. Create a variance account for the purposes of this Act.

2. Record the IESO funding shortfall in the variance account from time to time.

3. Recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The order of the Board shall be made in writing and without holding a hearing.

No appeals, etc.

(3) No appeal lies from the order of the Board.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts issued to specified consumers for the month if Part II of this Act did not apply.

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an

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adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022.

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other restrictions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan, which transfer creates the investment asset.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) unless otherwise provided for in this Act, the IESO shall have no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

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Same

(3) Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment asset owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

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2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

No set off, etc.

(2) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

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Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

Collective action required

(4) If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.]

Transfer of investment interest

26xx. An investment asset owner may transfer all or a portion of its rights and interests in an investment interest to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment asset owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment asset owner shall have priority over any liens in favour of such other persons.

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Investment asset owner may grant security interest

28xx. (1) An investment asset owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment asset owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment asset owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner or secured party by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

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No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

38xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[7] Note - see s. 51 of the Electricity Act, 1998

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[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under that Act and engaging in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including the following:

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1. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by the *Ontario Fair Hydro Plan Act, 2017* subject to the right of reimbursement from amounts available to the financing entity.

2. Preparing reports on behalf of the financing entity.

3. Enforcing the rights of the financing entity.

4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*

6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

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[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 70 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1)]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment asset owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received by or on behalf of investment asset owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

3. The sum of all amounts payable during the reference period by or on behalf of investment asset owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment asset owners that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment asset owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment asset owners during the reference period from deposits previously made as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:15:28
Attachment 1: image001.jpg
Attachment 2: SETOR1-#6709178-v8-Fair_Hydro_Plan_-_Issues_to_be_Addressed.doc

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Please see attached the IESO/Stikemans comments.

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Subject: RE: Ontario Fair Hydro Plan

All,

In case it is helpful for this afternoon’s meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

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Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We

suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

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Sent: April-15-17 10:06 PM
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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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Intergenerational Fairness in Hydro Rates Act, 2017 (draft)

IESO Issues

1. We have received advice from KPMG that it is critical to the ability of IESO to book a regulatory asset (which in turn is critical to the overall transaction) that the statutory language ensures that IESO has an effective right of recovery in respect of any IESO Funding Shortfall not transferred to the SPV. In our view, recovery by the IESO should be determined by OEB in accordance with the regulations and/or the Fair Allocation Plan. To this end, the IESO proposes that s 25.33 of the EA/O Reg 430/04 be amended, as necessary, to provide for the IESO to record the IESO Funding Shortfall amount in a variance account and to provide for the OEB to eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act, with such necessary OEB accounting order.

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall. (1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits: 1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. 2. No part of the funding shortfall shall be recovered before May 1, 2022. (2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment. 22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. (2) The Ontario Energy Board may, in accordance with the regulations, by	22. (1) The IESO has the right, exercisable in accordance with this Act and the regulations to recover the IESO funding shortfall. [This right constitutes a regulatory asset and a property right.] NTD: to the extent qualification as a regulatory asset is an accounting judgment there may be little value in attempting to dictate that result by statute. However, the use of a defined term "regulatory asset" for other purposes is fine. Is the intent that Sections (1.1)(1) and (1.1)(2) would limit the recovery rights of the Investment Asset Owner or just the IESO in respect of the regulatory asset. Any material express limitation or condition attached to the IESO right of recovery based on the fair allocation plan is likely to be problematic as impairing the effective right of recovery. If this is the result then IESO may be treated as an equity holder and may not be able to recognize the regulatory asset. In addition, Section (1.1) 1 appears to reintroduce the concept that IESO's

order specify how the IESO funding shortfall must be recorded.	funding shortfall amount ranks subsequent to the clean energy adjustment amount such that the recovery of the IESO's funding shortfall in a reference period is limited to whatever space is left under the fair allocation curve. . If the right to record the shortfall is subject to an OEB order, that order may need to be obtained in advance This language and structure may not be definitive enough to provide for a real right of recovery of any regulatory asset amount held by the IESO. The statute should provide that the IESO be required to record the funding shortfall in a variance account (without having to obtain OEB approval) and that the OEB be required, as prescribed by regulation, to provide for recovery of the variance amounts recorded - presumably the regulation could provide when, after 2022, and in what manner (i.e., over what period of time) the IESO can recover any regulatory asset amount. OEB, by accounting order, would establish an IESO [fair hydro] variance account and indicate what IESO shortfalls may be included in it. The OEB is not approving each funding shortfall. The OEB's role in recovery would be to include the funding shortfall variance in future prices so IESO may recover it. In Section 6, OEB also needs to continue to determine what RPP price would have been payable but for the price set by Section 6. This is needed so LDCs know what amount would have been invoiced, so IESO in turn, based on information provided by LDCs, can determine the funding shortfall.

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.	Note that Section 7 restricts prices increases to inflation forever. We suggest redrafting this to delete "for inflation" in paragraph 2. Section 8.2 is unclear with respect to what limits cannot be exceeded. It introduces uncertainty with respect to the IESO right to record a shortfall and the IESO right of recovery. It may therefore prejudice the accounting treatment.

2. In our view, the IESO should become and remain the owner of a distinct asset, defined as the Regulatory Asset. Upon a "transfer" of all or a portion of this Regulatory Asset, the Investment Asset owner acquires an Investment Asset. On this construct the IESO is not a co-owner with the Investment Asset owner of an asset, the IESO's portion of which is the Regulatory Asset and the Investment Asset's owners potion of which is the Investment Asset. The IESO, based on conversations with KPMG, believes that it obtains a better result from an accounting perspective if it owns a distinct asset, as opposed to a co-ownership interest which is likely to be treated as a residual or subordinated interest.

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan. 23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	NTD: The IESO right to transfer should not be subject to compliance with the Financing Plan. Consider corresponding amendment to Section 8.1 (1.1) so that the Fair Allocation Plan and the Financing Plan do not limit the ability of the IESO to transfer, or collect in respect of, a Regulatory Asset which has already arisen.

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that is not deemed to be an investment asset**; "investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x;	23. The IESO may, from time to time, transfer all or any portion of the regulatory asset. Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies. Any such transfer shall be without recourse to the IESO and upon any such transfer the IESO (or any person claiming through the IESO) shall have no further right, title or interest in (except as express provided herein) or any obligations in respect of, the portion of the regulatory asset transferred, or the corresponding investment asset. "regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, **the portion of the regulatory asset that has not been transferred**; "investment asset" the investment asset established under section x;

3. We think that further particulars will be required in relation to the definition of the Funding Shortfall. Therefore we would add reference to "as prescribed by regulations" to address the need to provide for any variance/true up. We also need regulations to address recovery of IESO funding costs (which at moment legislation does not address).

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts: 1. The sum of all invoice amounts issued to specified consumers for the month. 2. The sum of all invoice amounts that would have been issued to	22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period in accordance with the regulations. NTD: We think that the reference to a "reference period "is unnecessary. Alternatively make provision for the addition or subtraction of additional amounts as further prescribed by

specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply. (2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.	regulations.

4. For a number of reasons it is difficult to treat the transaction between the IESO and the Financing Trust as a transaction which is in law a transfer, sale or assignment. That terminology implies the transfer of property from one person to another. First, there remains uncertainty at law (even with the revised "fishing licence language") with respect to the whether the Investment Asset acquired by the Investment Asset Owner is property. Second, there is a higher level of uncertainty with respect to whether the Regulatory Asset is property, given that the Regulatory Asset does not have the same level of certainty of recovery as does the Investment Asset, and lacks some of the ancillary rights attached to the Investment Asset. Third, even if both the Regulatory Asset and the Investment Interest constitute property, there is a continuity gap between them since the rights acquired by the Investment Owner are different from the rights disposed of by the IESO.

We think that the best way of proceeding is for the Act to state specifically that upon any "transfer", the IESO has no further rights in the Regulatory Asset, or portion thereof transferred and the Investment Asset Owner acquires the corresponding Investment Interest free of any adverse claim. Since, in both cases, these rights are a creature of statute, it is hard to see how such a stipulation could realistically be challenged. However, in order to avoid circularity, the term "transfer" needs to be defined more broadly so that it is not dependent upon there being a transfer at common law.

"transfer" means an assignment, conveyance, disposition or sale.	"transfer" means (i) in relation to the regulatory asset, or any portion thereof, any act of IESO which states that is a "transfer" of all or any portion of the regulatory asset for purposes of this Act or any other act of the IESO by which the IESO purports to dispose of its interest in all or any portion of the regulatory asset and, as a result, constitute a named person the owner of an investment asset under this Act and (ii) in relation to an investment

	asset or any portion thereof …., and, in each case, transferred shall have a corresponding meaning.
25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.	Probably unnecessary, at least in relation to the Regulatory Asset, because of the effect given to a transfer of the Regulatory Asset in Section 23. In any event, because of the differences in the definition of "transfer" and because discontinuity is an issue for the Regulatory Asset but not for the Investment Interest, we would suggest that there be separate provisions dealing with the transfer of the Regulatory Asset and the Investment Interest.
(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.	NTD: not sure that there is any value in deeming a transfer to be absolute.
(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.	NTD: Perfection not likely relevant. Transfer should be free of any adverse claim.

5. While the electricity distributors can be sub-servicers of IESO as servicer, IESO can assume no responsibility for their performance obligations. Again, we are advised that this is critical from an accounting perspective.

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers. (2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations. (3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.	(4) The IESO shall not be liable to the Investment Asset Owner, any pledgee, or any person claiming through the Investment Asset Owner or any pledgee, for any failure to collect or remit, or any other breach or failure to perform, by any electricity vendor. Do we need to address the very limited circumstance of the IESO as an electricity vendor? Section 13x(1) does not appear to contemplate a volumetric rate, but rather the LDC determining a fixed amount payable by each of its consumers.

6. For constitutional reasons related to the federal bankruptcy power, limit the unnecessary use of "deeming provisions".

Section 15x (2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.	(2) The amounts deposited into the account, until paid in accordance with this Act and the regulations, shall be held in trust by the applicable electricity vendor for the investment asset owner.
Section 12 (2) The amounts collected are deemed to be held in trust for the investment asset owner.	(2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with this Act and the regulations shall be held in trust by the IESO for the investment asset owner.
23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.	…Upon a transfer of all or a portion of the regulatory asset, the investment asset owner acquires an investment asset to which this Act applies and the IESO (or any person claiming through the IESO) has no further right, title or interest in the portion of the regulatory asset transferred, or in the corresponding investment asset.
Section 25 (3) At the time a transfer of a regulatory	Delete, see new Section 23.

asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.	
"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")	"investment asset" the investment asset established under section x;
"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset;	"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that has not been transferred;

7. Does the clean energy adjustment determine the amount payable in respect of both the Regulatory Asset and the Investment Asset? If so, any subordination or other arrangement that results in the IESO receiving a residual interest may impact de-recognition. In our view, this calculation should exclude the IESO, and the IESO should have a separate right of recovery assessed by the OEB.

"clean energy adjustment" means…	Should specify that this is the amount required by the Investment Asset Owner and does not relate to IESO's right of recovery. Consistent with this, Schedule 1 is defined in relation to the funding and other costs of the owner of the investment asset.
11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified	Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy

consumers. (2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. (3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment. (4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.	adjustment for a reference period.

8. In order to ensure that the Disposition results in the de-recognition of the "regulatory asset" on IESO's books (and that the Disposition not be treated as a financing transaction) it is important the Disposition) by IESO to the financing trust be without recourse to IESO and that all collection obligations on the part of IESO be on a reasonable efforts, or consistent efforts, basis only. Therefore, clarify that the IESO's trust and remittance obligations are limited to amounts actually received by it. IESO's obligation to segregate and remit should be conditional upon receipt of the corresponding amounts from the electricity vendors.

Section 12 (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). (2) The amounts collected are deemed to be held in trust for the investment asset owner.	Section 12 (4) The IESO shall promptly deposit all amounts received by it from electricity vendors pursuant to Section x into the account established under subsection (3.1). (2) The amounts received by the IESO from electricity vendors pursuant to Section x until paid in accordance with

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.	this Act and the regulations shall be held in trust by the IESO for the investment asset owner. (5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations. Regarding section 11x(2), IESO recommends adding variance tracking so that the financing entity can communicate any variance (positive or negative) to the OEB. This should also be included in Schedule 1 as an input to determining the amount of clean energy adjustment for a reference period.

9. Daily remittances are not consistent with the operation of the system and may not be practical. At the very least, this should be left open to be addressed in the commercial documents.

Section 12x (4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1).	Define "promptly", or provide that it is to be specified in the Regulations. The invoicing contemplated by section 12(2) regulations should be done based on IESO's monthly settlement process. It would appear that this is the case; section 13(1) references LDCs determining clean energy adjustment on a monthly basis. (4) contains a Note about considering daily segregation or remittances. IESO does not believe daily remittances are necessary. Daily remittances would add additional complexity and cost to the settlement process. It is not clear that LDCs would be able to move to daily remittances without substantial cost and effort.

	The risk of a particular LDC going bankrupt is small. If an LDC does go bankrupt, daily remittances merely minimizes risk of a month of remittances for that one LDC, which the Financing Entity can recover in a future period in any event through the True Up.

10. Consider the extent to which deeming provision are required in connection n with the operation of the PPSA. The number of deeming provisions raises the issue of whether the security interest provided for is one provided for by statute or one provided for by the PPSA. For the most part, once the application of the PPSA is provided for, the perception, priority and proceeds rules in the PPSA ought to be allowed to operate (and should not prejudice the transaction).

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.	Use PPSA term "security interest"
(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.	Redundant. In any event, the reference to set-off is not relevant or appropriate. Why not use PPSA terminology.
(3) The pledge may be made to secure a funding obligation **and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.**	Redundant and may prejudice the conclusion that a conventional PPSA security interest is intended,
(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the Personal Property Security Act.	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider

(x) A pledge perfected under the Personal Property Security Act shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.	whether that can or should be done. Redundant, the priority rules in the PPSA should be sufficient,
(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.
(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act. (9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted. (10) The person to whom the pledge has been granted shall have a perfected	Redundant, except to the extent it is contemplated to expand the PPSA concept of "proceeds". Consider whether that can or should be done.

security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.	

11. Partial payments by retail customers to electricity distributors should be allocated to Transition Charges on a ratable basis, and once allocated shall be segregated.

14x. (1) This section applies if, (a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and (b) the amount paid is less than the total amount payable. (2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices. (3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.	Correct.

12. In order not to impair the ability of the IESO to dispose of its interest in the Regulatory Asset and in order not to impair the financibility of the Investment Interest by the Trust, subsequent actions and compliance with allocation plan and

the financing plan should not be a condition of the effectiveness of any aspects of the transaction.

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.	(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a **transfer, funding obligation or grant of a security interest** that was effected or incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

13. Provide legislative basis for provision of commercial undertakings of the sort which may be required for purposes of h financial close.

200x. (1) Subsection 6 (1) of the Electricity Act, 1998 would be amended by adding the following clauses: (q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)]; (q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities; (q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include, (i) incurring liabilities in relation to the regulatory asset (ii) transferring the regulatory asset to [any special purpose financing	Retain specific objects but add a general object "to engage in activities to facilitate the implementation of the Fair Hydro Act, including:…" NTD: incorporate the expanded

entities established under (name of new Fair Hydro Act?)];	definition of "transfer"
(iii) transferring the regulatory asset to third parties;	NTD: "and the "transfer thereof"
(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];	NTD: consider need a for authority to enter into, if required, underwriting agreements and sign offering documents
	NTD: Consider need for exemption under *Collections Agencies Act*.

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:10:08
Attachment 1: image9b9365.JPG
Attachment 2: New Sections.DOCX

All,

In case it is helpful for this afternoon's meeting I have put the points from my last email into a Word document (attached) that might be easier to work with. I will bring extra copies to the meeting.

Michael K. Feldman

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Subject: RE: Ontario Fair Hydro Plan

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a

view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset

(although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the

investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG's perspective.

Michael K. Feldman

P. 416.865.7513

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft "Intergenerational Fairness in Hydro Rates Act, 2017". A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes' summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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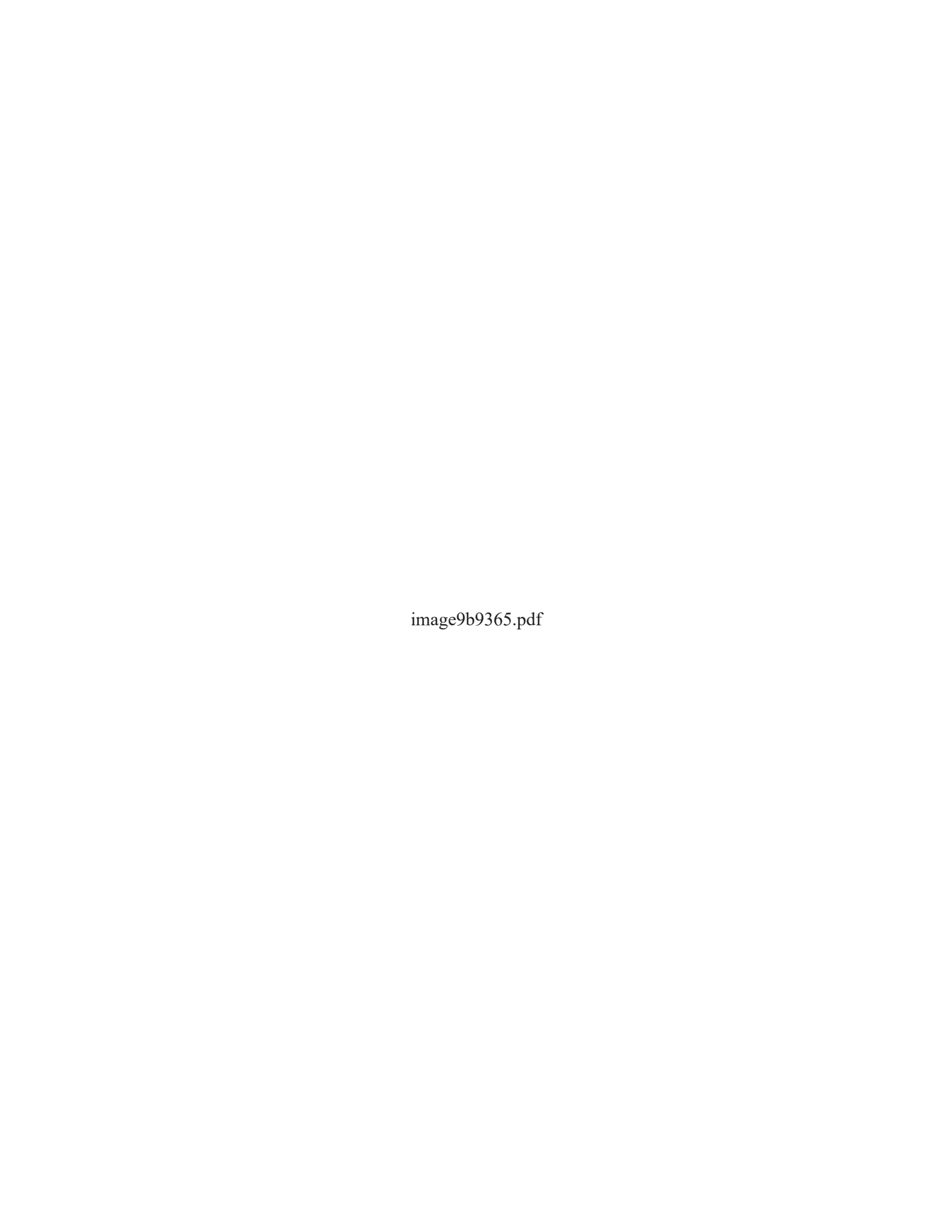
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TORYS
LLP

New Sections.pdf

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10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a "collective rights agreement" affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

"Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 12:00:19
Attachment 1: Fair Hydro Act (April 17 2017) Consultationv5.docx

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Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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Fair Hydro Act (April 17 2017) Consultationv5.pdf

Version 2

This document is a draft intended for discussion purposes only. It may not be relied upon to interpret the legislation, if an Intergenerational Fairness in Hydro Rates Act, or any related act, is enacted by the Legislature. The notes included in this document are intended to assist the review of this discussion document only.

Confidential Draft

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.*)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix that includes renewable energy. The Government is also committed to removing barriers to and promoting opportunities for renewable energy projects.[1]

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom.[2]

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating sites and facilities[3] in a manner that allocates the costs of these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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11.

[1] FLS: please see the preamble of the *Green Energy Act, 2009.*
[2] FLS: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] FLS: please see opening flush of s. 92A (4) of the Constitution Act, 1867

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means the amount determined under section 11x; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects and cleaner energy sources and technologies, including alternative energy sources,

(b) removing barriers to and promoting opportunities for renewable energy projects and cleaner energy sources and technologies and clean energy, and

(c) promoting conservation and demand management; ("French")

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"electricity vendor"[4] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")
[Note – still to draft: unit sub-meter providers and their customers.]

"Fair Allocation Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section 12.1; ("French")

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means New Year's Day, Family Day, Good Friday, Christmas Day, Boxing Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day and, if any of those days falls on a Saturday or Sunday, the weekday next following that day that is not one of those days; ("jour férié")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section X for the reference period; ("French")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means, in respect of a consumer, the sum of the following amounts:

1. The commodity price of the electricity [used by the consumer?] during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

[4] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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3. Any adjustment required [in respect of the consumer?] under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable [by the consumer?] under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

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"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday" means any Monday, Tuesday, Wednesday, Thursday or Friday that is not a holiday. ("jour de semaine")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

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1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[5]

1.1 (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature

[5] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

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being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[6]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[7] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

[6] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[7] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an investment asset owner;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[8]

Electricity vendors, obligations

(5) If an electricity vendor fails to carry out its obligations under this Act for any reason, including because the electricity vendor is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

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[8] Note to translator: See s. 9 of the Public Authorities Protection Act.

PART II
FAIR ADJUSTMENT

Determination of rates, May 1, 2017 to April 30, 2018

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer in accordance with subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the average rate payable shall be determined as follows:[9]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. The Board shall forecast the costs of electricity to be consumed by the representative consumer, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

[9] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer as follows:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor, as agent of the owner of the investment asset, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Limitation

(1.1) No clean energy adjustment shall be collected from a specified consumer before May 1, 2022.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due; and

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(b) whether the clean energy adjustment relates to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to each investment asset owner in respect of each owner's respective interest in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers.

True up amount

(2) The Ontario Energy Board may, in accordance with the regulations, adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period.

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IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustment in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect the clean energy adjustment from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 15x.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustment.

Deposit

(4) The IESO shall promptly deposit all amounts received in respect of the clean energy adjustment into the account established under subsection (3.1).

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of the clean energy adjustment to or for the benefit of the investment asset owner in accordance with the regulations.

Collection of outstanding amounts, regulatory asset

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the IESO may collect the difference from specified consumers.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall, in accordance with the codes and orders of the Ontario Energy Board, determine the proportionate share of the clean energy adjustment payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of the clean energy adjustment in accordance with the regulations.

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Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to the clean energy adjustment into the account established under X.

Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of the clean energy adjustment.

2. Portions of payments by specified consumers that are allocated to the clean energy adjustment under subsection 14x (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of the clean energy adjustment to the IESO for the benefit of the investment asset owner in accordance with the regulations.

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PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

MINISTER TO PREPARE FAIR ALLOCATION PLAN

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 for a reference period among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a reference period,

(a) the costs incurred by the IESO previously or expected to be incurred by the IESO during the reference period and after the reference period in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before the reference period or expected to be incurred during or after the reference period. (“French”)

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Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. Costs of the clean energy initiative should be allocated among specified consumers during the period beginning on the day this Act comes into force and ending on April 30, 2047 or such later day as may be prescribed.

2. The allocation of the costs among specified consumers should be proportionate to the benefits of the clean energy initiative to those specified consumers over time.

3. During a reference period, no specified consumer should bear an unreasonably disproportionate share of the costs.

4. To the extent that specified consumers have borne an unreasonably disproportionate share of the costs over periods that occurred before the coming into force of this Act, the allocation should provide for a fair adjustment for those specified consumers.

5. The allocation of costs among specified consumers over future reference periods should include reasonable assumptions about the time value of money, the rate of inflation, electricity consumption and the composition of specified consumers as a class of individuals.

Implementation

8.2 The IESO shall ensure that the IESO funding shortfall during a reference period does not exceed the maximum amount set out for the reference period in the Fair Allocation Plan.

FINANCIAL SERVICES MANAGER TO PREPARE FINANCING PLAN

Ontario Power Generation Inc. appointed as Financial Services Manager

8.3 Subject to section 12.1, Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost effective and consistent with the Fair Allocation Plan.

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Consistency with Fair Allocation Plan

(2) The Financing Plan in effect at any given time shall be consistent with the applicable Fair Allocation Plan.

Amendments to approved plan

(3) The Financial Services Manager may propose amendments to the Financing Plan at any time.

[Note - still need to deem Financial Plan to be third party confidential information for the purposes of s. 17 of FIPPA?]

Implementation of Financing Plan

11.1 The Financial Services Manager shall implement the Financing Plan.

Contents of plan

12. (1) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following:

1. The allocation of costs of the clean energy initiative among specified consumers over reference periods, as described in the Fair Allocation Plan.

2. The estimated IESO funding shortfall for each reference period.

3. The funding obligations incurred as part of the consideration for the sale of the regulatory asset.

4. The need for the clean energy adjustment payable by a specified consumer to be proportionate to the benefit that the specified consumer receives from the clean energy initiative.

5. Reasonable compensation for the Financial Services Manager on terms that balance market terms and conditions with the interests of specified consumers.

6. Such other matters as may be prescribed.

Limitation

(1.1) The Financing Plan shall not provide for the collection of the clean energy adjustment by specified consumers before May 1, 2022.

Special purpose financing entities

(2) The Financing Plan may provide for the Financial Services Manager to,

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(a) if the Financial Services Manager is Ontario Power Generation Inc., establish one or more special purpose financing entities under subsection 53.1 (1.2) of the *Electricity Act, 1998*, that may incur funding obligations; or

(b) if the Financial Services Manager is appointed under section 12.1, establish one or more special purpose financing entities under subsection (3) that may incur funding obligations.

Same

(3) If the Financial Services Manager is appointed under section 12.1, it may create one or more special purpose entities in order to more efficiently conduct its activities under this Act.

Prohibition

(3) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan or Financing Plan that is made after the funding obligation has been incurred.

Termination of appointment

12.1 (1) The Minister may [by what means? Written order?] terminate an appointment as Financial Services Manager under section 8.3 or subsection (2) if,

(a) the Minister has advised the appointee that the Financing Plan is not consistent with the Fair Allocation Plan;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(2) Upon terminating an appointment under subsection (1), the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

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PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount of the IESO funding shortfall recovered in respect of a reference period may not exceed the amount determined in the Fair Allocation Plan for the reference period, minus the amount of the clean energy adjustment for the reference period.

[Note: Will want to link up the language in para. 1 above with the language relating to this in provision above that authorizes the IESO to collect this amount (where some of the R.A. has not been sold) - s. 12x (6).]

2. No part of the IESO funding shortfall shall be collected from specified consumers before May 1, 2022.

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books, including adjustments resulting from any transfer of the regulatory asset.

Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

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No hearing

(4) The order of the Ontario Energy Board shall be made in writing and without holding a hearing.

No appeals, etc.

(5) No appeal lies from the order of the Ontario Energy Board.

Judicial review

(6) The *Judicial Review Procedures Act* does not apply to an order made under this section.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: The value of any consideration received as part of a transfer should be reflected in this section -- see below para. 2 of subs. 23 (2) which says the payment should cause a reduction in the shortfall.]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective investment asset owner shall pay to the IESO an amount equal to all or part of the IESO funding shortfall.

2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the IESO funding shortfall in its books.

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3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset
Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced,

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collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment asset owner or an owner of distribution system assets in the Province;

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a);

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer.

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Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager may administer an investment asset on behalf of the investment asset owner.

[Note: Consider location of this section with other roles of FSM above.]

Same

(1.1) The administration of an investment asset may include the following:

1. Providing information to the Ontario Energy Board in respect of the funding obligation and the determination of the clean energy adjustment in accordance with section 11x.

2. Providing information to electricity vendors in respect of their obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations.

Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer

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upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.
[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

Same

(x) A pledgee shall have a perfected security interest in a related [Investment Interest?], including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the [Investment Interest?] and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and

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shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx] of the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

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Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 (1) A court in the Province may, upon application by an investment asset owner [or pledgee?], order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment asset owner [or pledgee] by any person or entity authorized to collect the clean energy adjustment, defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any bankruptcy, reorganization or other insolvency proceedings with respect to the person or entity who is subject to the order.

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

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Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[10]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(a) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment.

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII[11]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the [Fair Hydro Act];

(q.1) to enter into agreements or arrangements with for the purposes of the FHA;

[10] FLS - see s. 51 of the Electricity Act, 1998

[11] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(q.2) to engage in activities related to making payments to and receiving payments as contemplated under the FHA and to engage in related settlement activities;

(q.3) to engage in activities related to the creation, transfer and administration of the regulatory asset created under the FHA, which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset for consideration;

(q.4) acting as a recovery agent under the FHA;

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, [FHA]

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include the following, in addition to any other objects, relating to the FHA:

1. Exercising the powers and rights and performing the duties and obligations assigned to it under that Act.

2. Entering into contracts and undertakings on behalf of special purpose financing entities, including pre-formation contracts and undertakings and as principal in relation to matters permitted by that Act subject to the right of reimbursement from amounts available to the financing entity.

3. Preparing reports on behalf of the financing entity.

4. Enforcing the rights of the financing entity.

5. Signing offering documents as sponsor or otherwise on behalf of the financing entity.

6. Exercising the powers and performing the duties of the Financial Services Manager under that Act.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create one or more subsidiaries, trusts or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

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202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under the FHA.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investement assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

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Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or

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establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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RE_ Ontario Fair Hydro Plan.rtf

From: Feldman, Michael [mfeldman@torys.com]
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Subject: RE: Ontario Fair Hydro Plan
Date: Monday, April 17, 2017 10:39:40
Attachment 1: image5ddddd.JPG

Carolyn,

OPG, Torys, the Dealers, Oslers and Hunton & Williams had a call yesterday with a view to coming up with broader issues for discussion at this afternoon's meeting. Below is a list of what we believe are the broader issues. We expect that on the drafting issues you and Blakes continue to try to move legislative counsel closer to the last version of the Blakes memo that you circulated along with the draft Bill on Saturday night. We are inclined to leave you to pursue that process and will reserve any drafting comments until we see the next version of the Bill.

Our larger issues are:

1. It appears as though IESO will not be able to create a funding shortfall (regulatory asset) in a month when the Fair Adjustment would be less than "Past Over-Charges". How will Investors be able to get comfort that IESO is not selling an

asset to a Financing Entity (FE) that might exceed "Past Over-Charges" ? Is there transparency around this calculation ? Is the information that would be required to due diligence this point publicly available ? Would it be reasonable to suggest that we could get a certification from MOE before each financing that the IESO shortfall together with all previous IESO shortfalls under this Act would not exceed Past Over-Charges ?

2. According to the note after s. 5 there will be a five year moratorium on clean energy adjustments (contrary to what we had been led to believe). This means that it will be necessary to capitalize all interest, financing charges and other expenses for five years. Hopefully this is just a case of the legislative drafting being behind the decision making. However, if this is the intention then it is a big problem. In additional to the financing challenges, we are advised that in order for the desired accounting treatment to be available it is necessary that there be sufficient cash flow to service the debt on a current basis. It will not be sufficient to purchase the regulatory asset at a deep discount or pay interest and expenses out of cash reserves.

3. In light of 2, the absence of a market disruption guarantee in s. 4 is most concerning. A market disruption guarantee could be contained in a contractual undertaking by the Crown, but since it is not included in s.4(3) lenders would have to be comfortable that the Province could do this outside of the provisions of the Act. We suggest that section 4(3) be revised to provide the Minister with the broadest possible authority to enter into agreements in support of the Fair Allocation Plan rather than the limited scope currently provided.

4. We need more specificity around the "funding obligation" definition. Permit this definition to refer to the Regs (ie, “payment obligations as may be prescribed”).

5. How will Investors get comfortable that particular funding obligations have been incurred in accordance with the Financing Plan. The proposal in s. 9x(2)(b) is one solution but there appears to be some reluctance in the note to draft. I am not sure there is anyone else other than the Province who is capable of covering the consequences if a funding obligation is declared invalid because it was not issued in accordance with the FP, but this does not appear to be covered by s. 4. Our understanding was that there should be no adverse consequences if funding obligations are issued in a way that does not fit the Financing Plan. This is far from clear in the draft Bill.

6. In s. 12x(3) IESO should not have a statutory duty to "make reasonably diligent efforts". The standard of care should be set out in the applicable agreements and we expect that it will be to use the same standard of care that IESO currently uses in its role of collecting the GA amounts for electricity generators. But the standard should not be hardwired into the statute. We are all in agreement that IESO is not guaranteeing collections.

7. Section 8.1, items 2 to 6 are far too vague to be able to verify compliance. In any event, Investors cannot be expected to take a risk that their debt is not incompliance with the FAP. There needs to be some way to get assurances from the Province that once the Financial Services Manager has authorized the issuance of funding obligations by a Financing Entity there is no risk of such debt being declared invalidly issued or being declared as unauthorized debt.

8. In section 8.0.1(a) we would like an explanation of what is intended to be included. It is not clear to our regulatory lawyers that this is all “green energy”.

9. Section 11(1) must not state that the Financing Plan is cost-effective. It will clearly not be as cost-effective as direct funding by the Province.

10. There is still no restriction on who can be an owner of an investment asset (although section 26(1) appears to be heading in that direction). Is it necessary to define Financing Entity and limit investment asset owners to FEs, or is it OK to have an operating enterprise as an investment asset owner so long as it is administered by OPG on behalf of Brookfield ? Dealers have a concern that perhaps the Province (through an agency or Crown corporation) could become an investment asset owner and through something like a “collective rights agreement” affect the rights of other investors.

11. Section 22(1) needs to define the IESO funding shortfall precisely and determinatively. It cannot be subject to 22(1.1)(1). It must be determined each month before it is sold. Also, the Act should provide the basis by which IESO (in the absence of a transfer) would be entitled to recover this shortfall. (We understand that is required in order for IESO to treat the shortfall as a regulatory asset.) Also, s. 22.1(1) is a problem because we cannot have the recorded amount subject to an approval order from OEB (otherwise, any financing would be conditional on getting that order and

ensuring that any possible appeal process has expired). Section 22.1(3) seems to contradict 22.1(1). Section 22.2(2) can't be based on actual use; it can only be based on estimated use. In sum, this section needs lots of work and probably much of it can be moved to the Regs.

12. Sections 23(1) and 23(2). We can't have the transfer of a regulatory asset be subject to the Financing Plan. Also, can't impose restrictions on the price at which IESO sells the regulatory asset. Sales must be conclusive and not subject to post-closing analysis.

13. Section 23.1 is a key section and it currently does not work as it should (hopefully because legislative counsel were working of an old version of the Blakes memo). I would redraft that section to read as follows:

'Upon transfer of the regulatory asset or a portion thereof to a transferee, the regulatory asset or portion thereof shall comprise a portion of the investment asset recoverable by the transferee in accordance with this Act and shall be immediately vested in such transferee."

I think it is also important to update the definition of "transfer" to catch the latest changes to the definition of "Disposition" in the Blakes memo (ie, that it includes a release by IESO of its right to recover its regulatory asset in order to enable the investment asset owner to recover such amount).

In a separate email we will also be sending to you and a smaller group than this some tax comments from OPG’s perspective.

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Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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TORYS
LLP

Re_ Ontario Fair Hydro Plan.rtf

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Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:14:54
Attachment 1: OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas of concern we have also provided suggested revised drafting on the attached. Briefly, the pricing for RPP consumers for 2017/2018 as written appears to us to "over-smooth", and the pricing for non-RPP consumers - which by its terms appeared to us to be having the OEB set commodity prices for these consumers - is not what we understand the policy intention to be.

We have also proposed two new sections that we believe are necessary in order for the OEB to appropriately carry out its responsibilities under this legislation, as well as two new consequential amendments to the OEB Act. These are towards the back end of the document.

Martine

Martine M. N. Band

Associate General Counsel

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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and

Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
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Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA);

Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

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OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4: OEB COMMENTS

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[OEB Note to Draft:

(1) We offered a number of comments on the earlier draft regarding the ability of distributors to implement certain parts of this legislation given their billing systems, accounting practices etc. Those remain open questions.

(2) We note that certain elements are now proposed to be moved to the regulations. We understand the rationale for that, but in respect of setting new RPP prices and the GA modifier under Part II in particular it is critical that the regulations reflect our current understanding of the approach to be used by the OEB in performing those tasks.

(3) We understand that RPP prices and the GA modifier will only apply as of the effective date going forward, but as raised the other day does this require a change to ensure that the shortfall from May 1 to the effective date resulting from our May 1 price change (the forecast $1B GA reduction) will be captured as part of the funding shortfall/reg asset?

(4) The OEB will not be able to perform all of its responsibilities under this Act without information from others (for example, the IESO) and without proper third party accounts. We have included a proposed new provision at the end for this purpose.

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(5) Absent anything else, the OEB's responsibilities would need to be done through a hearing. We propose a new provision at the end that would enable the OEB to perform these responsibilities with or without a hearing.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor, ***[OEB Note to Draft: Are Cornwall and Dubreuil intended to be captured]***

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by ~~the specified consumer, by an agent of the specified consumer or by~~ a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")***[OEB Note to Draft: See NTDs below]***

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity ~~used~~. ***[OEB Note to Draft: The word "used" is not in ORECA, and we are not sure why it would need to be added now.]***

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. ***[OEB Note to Draft: We understand that the addition of the reference to April 2017 is to address the fact***

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that the OESP charge is coming off the bill on May 1. However, note also that (i) there will be another change to the THESL rates for the residential service class effective May 1 – a rate rider of 8 cents/month is coming off; and (ii) the April 30th bill will still have the full RRRP charge (as will the May 1st bill).]

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or a ~~other~~ person prescribed as an electricity vendor~~entity~~, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

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Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

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[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rates are ~~is~~ commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is invoiced ~~subject to~~ the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) Despite any order under section 78(3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, ~~T~~the rates for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). ***[OEB Note to Draft: (1) We assume that the criteria will prescribe the THESL proxy consumer criteria, and will do so in the manner we expect based on our last comments on the draft legislation. (2) We remain concerned that the 25% will "oversmooth", potentially by the amount of the RRRP charge and by the amount of the 8% rebate. Oversmoothing by the amount of the OESP charge may potentially have been addressed by the reference to April 30th in the definition of "invoice amount", but not sure.]***

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to this Act. ***[OEB Note to Draft: (1) This concept has to be a pre-fair adjustment concept. The OEB has already included a portion of the fair adjustment in May prices. And it did so "solely using the method prescribed" in the reg. under 79.16. Unless you somehow recognize that expressly here, we believe you will be oversmoothing. "Without regard to this Act" may not be the right words, but we believe the concept needs to be reflected here. (2) "Without regard to this Act" may also avoid the application of the changes to 25.33 set out later – it isn't clear that they would be applicable at this time, but if there is a chance that they might then it should be clear that they don't apply.]***

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force. ***[OEB Note to Draft: We don't understand the purpose of this section. The method under 79.16 hasn't changed, and it seems to us that this has the potential to exacerbate the problem noted in relation to the above section]***

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Specified consumers (non-RPP), first fair adjustment

6.2xx The monthly global adjustment rate ~~rate for electricity~~ payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is adjusted by an adjustment factor set by the Board to reduce the monthly global adjustment rate ~~the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced~~ by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). ***[OEB Note to Draft: (1) As worded, this section would have the OEB setting electricity prices for these consumers. We understood that this was not the intention. If that is now the intention, please advise – note that other issues will then have to be addressed. Assuming that you are staying with the "GA modifier" approach as we understand it, we have revised along those lines. Note that the IESO is going to have to calculate the fair adjustment-adjusted GA for these consumers based on the OEB's modifier – are you going to amend 429/04 accordingly? And will the IESO have the systems in place to settle with LDCs on that basis? (2) The reference to the GA reg has been added because some customers pay GA on the basis of an estimated rate and others on the basis of actuals. That may or may not completely address the issue, but we believe it helps.]***

Determination by Board

6.3xx The Board shall determine the rates mentioned in section~~s~~ 6.1xx and the adjustment factor mentioned in section 6.2xx no later than seven business days after the day this section receives Royal Assent. ***[OEB Note to Draft: The OEB will not be able to meet this timeline unless the methodology to be used to set the prices and the GA modifier is what we understand them to be today.]***

Implementation of rates

6.4xx Each electricity vendor, ~~[specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer]~~ shall, no later than seven business days after the day on which the Board determines the rates and adjustment factor under section 6.3xx, adapt ~~is billing practices and~~ its invoices to reflect the new rates and the application of the adjustment factor. ***[OEB Note to Draft: (1) We suggest that this section should be deleted. First, it is not necessary – the responsibility of the LDC is to bill the rates then in effect, not to have its systems adapted by a given date. Second, what if the prices don't take effect on the 7th business day? Are LDCs going to be billing the new rates in advance of the date on which they take effect? (2) We do not know whether distributors will be able to do this – 7 business days is enough for a straight RPP price change, but unknown for the GA modifier. (3) We don't understand the purpose of referring to billing practices***

here – please advise as to what about their billing practices is going to change. (4) If you delete this section, other sections below will need to be modified accordingly.]

Effective date

[OEB Note to Draft: (1) This section doesn't work if Royal Assent happens on a date that is later than 7 business days before the end of June. If Royal Assent is later, there may be no new rates in place on July 1. We have therefore changed "earlier of" to "later of". (2) We assume that month means calendar month notwithstanding the deletion of the word "calendar" (but would appreciate confirmation) - RPP prices could come into effect on a day other than the first day of the month, but it is not clear whether the same can be said for the modified GA rates. This would need to be discussed with the IESO.]

6.5xx The rates and adjustment factor determined under section 6.3xx are effective on the later ~~earlier~~ of the following days:

1. The first day of the month immediately following the last day of the seven business- day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

[OEB Note to Draft: Is item 1 circular? .Compliance with section 6.4 requires adapting bills within 7 BD of the date on which the Board sets the rate/adjustment factor. So why would there being less than 7 BD between that date and the effective date of the rates be relevant to compliance under 6.4?]

6.6xx (1) This section applies if an electricity vendor ~~, specified consumer or unit sub-meter provider~~ is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination of rates and the adjustment factor under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor ~~, specified consumer or unit sub-meter provider~~ shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and ***[OEB Note to Draft: It is not known whether LDCs can***

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implement this by August 1, particularly for the GA modifier. Note that you left 6 months for ORECA.]

(b) ensure that any specified consumer ~~or sub-meter customer~~ invoiced at ~~a~~ rate ~~rate~~ higher than the applicable rates determined by the Board under section 6.3 or invoiced a monthly global adjustment rate that does not reflect the application of the adjustment factor determined by the Board under section 6.3 receives the difference between the rates or global adjustment amount shown on their invoice for electricity consumed on and after the effective date ~~and the applicable rate~~ and the rates or monthly global adjustment as determined under section 6.3 as a lump sum credit on the first invoice received ~~issued~~ after the invoices have been adapted or by such other means as may be prescribed by the regulations. ***[OEB Note to Draft: LDCs may still struggle with this – worth verifying feasibility with the LDCs]***

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified RPP consumers under section 79.16 of the *Ontario Energy Board Act, 1998* ~~specified consumers and sub-meter customers~~ during the period beginning on May 1, 2018 and ending on April 30, 2022. ***[OEB Note to Draft: Either the OEB is setting RPP prices under this section, in which case it should be worded as such, or the OEB is setting RPP prices under section 79.16. This provision as drafted did not appear to us to achieve either purpose. We have proposed to clarify that the regulations affect the setting of prices under section 79.16 because the concept of a "specified RPP consumer" is defined by reference to section 79.16 and therefore seems to us to pre-suppose that we are setting RPP prices under 79.16 for this period.]***

7.1xx The monthly global adjustment rate payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on May 1, 2018 and ending on April 30, 2022 shall be adjusted by an adjustment factor determined by the Board in accordance with the regulations.

~~**Sub-meter customers**~~

~~**7.1xx** A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.~~ ***[OEB Note to Draft: (1) We do not understand why anyone other than a consumer that is sub-metered by a licensed USMP needs to be captured by this legislation. If a landlord/building owner passes through the cost of electricity to***

tenants in a building that is not sub-metered, it would be included in rent or billed on a basis like square footage or number of units. These kinds of consumers do not pay a regulated rate today, they pay the costs passed through by the landlord/building owner. (2) In terms of consumers served by a USMP, we believe that their obligation should be to pass through the fair adjustment. We propose something for that below.]

7.2xx (1) This section applies if,

(a) a specified consumer provides to a sub-metered consumer electricity in respect of which the specified consumer is entitled to a fair adjustment under this Part; and
(b) an invoice for the electricity is issued to the sub-metered consumer by a unit sub-meter provider providing sub-metering for specified consumer.

(2) Every unit sub-meter provider providing unit sub-metering for the specified consumer shall, in accordance with such requirements as may be prescribed, ensure that each sub-metered consumer referred to in subsection (1)(a) receives its share of the benefit of any fair adjustment that is provided to the specified consumer under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

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Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

~~**Recovery from sub-meter consumers**~~

~~(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.~~ ***[OEB Note to Draft: We do not understand the need for this section. If the overall framework needs for USMPs to recover these amounts, then that should presumably be included. Something that simply allows them to recover the CEA doesn't seem to us to work in the context of their acting as agent for the unlicensed distributor and where the total CEA payable for the building should presumably be on the bulk meter bill. If you are retaining some residual reference to consumers that are in buildings that are not sub-metered, then at a minimum we believe that USMPs should be backed out of this.]***

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

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1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed. ***[OEB Note to Draft: The regulations will need to provide a timeline within which this information has to be provided if there are timelines for the setting of rates applicable to the OEB under (5)]***

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment as notified to it under subsection (4) in respect of the reference period. ***[OEB Note to Draft: (1) Do you need to contemplate the possibility that different CEA rates may be required for different specified consumers (i.e., consumers on RPP vs. others?) (2) The OEB will likely need consumption information from the IESO in order to do this. See our proposed new section at the end.]***

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

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2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations. ***[OEB Note to Draft: It remains unclear to us whether this is a separate invoice or the normal utility bill. Requiring LDCs to issue separate bills will increase their billing costs and create customer confusion.]***

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations. ***[OEB Note to Draft: Having LDCs use a collection process for the CEA that is different from a collection process for the rest of the bill will be an issue for them (assuming that the CEA is invoiced on the normal utility bill). The OEB has requirements that LDCs have to follow in relation to invoicing and that apply to the rest of the bill. Depending on what collection means, there could be a conflict.]***

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period. ***[OEB Note to Draft: See our concerns on our earlier draft about whether LDCs can track this way]***

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of ~~funding obligations and~~ the Board's determination of the clean energy adjustment rate under ~~in accordance with~~ subsection 10(5)~~xx~~. ***[OEB Note to Draft: Our proposed new provision at the end would eliminate the need for this item. In addition, why does the OEB need information regarding "funding obligations" and the determination of the CEA itself,***

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which we understand to be a global dollar amount that we are expected to take from the FSM without question to derive the CEA rate?]

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. ***[OEB Note to Draft: We still do not know what these costs are; what the purpose of the review is; what process we are expected to use for this review and whether an order of some kind will be required; and whether the review has any consequence for anything else that we need to think about in relation to this responsibility. We understand that some of this may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end]***

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1). ***[OEB Note to Draft: There is no 17(5).]***

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement. ***[OEB Note to Draft: We remain of the view that the OEB's assets should be immune from recourse whether or not the OEB has responsibilities under this Act.]***

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. ***[OEB Note to Draft: We understand that some details may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end. If this is going to be implemented through RPP prices, O. Reg. 95/05 will presumably need to be amended accordingly at some point.]***

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

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Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

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Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

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(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. ***[OEB Note to Draft: Presumably, this means that the rights and interests will be through the electricity vendors acting as their agents? If so, what does that mean for LDCs?]***

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

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Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board, or against a member of the Board, ~~OEB~~ for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. ***[OEB Draft Note: Under the OEB Act, Board members are specifically noted as not being employees of the OEB. It is imperative that they also be covered by this provision.]***

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998

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37.1xx. Each electricity vendor, the IESO, the Financial Services Manager and such other person as may be prescribed shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

37.2xx Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act with or without a hearing.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[OEB Note to Draft: In the interests of time, we have not reviewed the section below in detail. However, without a better understanding, it raises a question about the continued viability of section 79.16(3) of the OEB Act, which we address below.]

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and

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engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

~~6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.~~ ***[OEB Note to Draft: We remain of the view that this is ill-advised. On the earlier draft we noted that, among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers. If this were to be an objective, it will by definition have to be considered whenever we exercise any part of our mandate, and we understand that this is not the intention. In the context of distribution and transmission rates, this could potentially affect utility financial viability or reliability of service if it comes into play in setting their rates.]***

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

205.1x Section 70 of the *Ontario Energy Board Act, 1998* is amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Section 79.16 of the *Ontario Energy Board Act, 1998* is amended by deleting subsection (3). ***[OEB Note to Draft: We are concerned that, with the different changes set out in this Act (including notably the changes to 25.33 above), the impact of which is not yet known, the obligation to clear variance accounts will not be feasible in the way that it is today, and could cause the OEB to act in violation of this subsection. If it is relevant in the future, it can be added to O. Reg. 95/05].***

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Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
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Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 23:14:54
Attachment 1: OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.docx

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Attached are the OEB's comments on, and proposed changes to, the draft legislation.

Our principal area of concern is Part II, and in the interests of time in addition to commenting on areas of concern we have also provided suggested revised drafting on the attached. Briefly, the pricing for RPP consumers for 2017/2018 as written appears to us to "over-smooth", and the pricing for non-RPP consumers - which by its terms appeared to us to be having the OEB set commodity prices for these consumers - is not what we understand the policy intention to be.

We have also proposed two new sections that we believe are necessary in order for the OEB to appropriately carry out its responsibilities under this legislation, as well as two new consequential amendments to the OEB Act. These are towards the back end of the document.

Martine

Martine M. N. Band

Associate General Counsel

Ontario Energy Board

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Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and

Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

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From: Kacaba, Jennifer (ENERGY)
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Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

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Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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OEB Comments_April 26_Fair Hydro Plan Act (April 26 2017) Consultation v4.pdf

Version 4: OEB COMMENTS

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

[OEB Note to Draft:

(1) We offered a number of comments on the earlier draft regarding the ability of distributors to implement certain parts of this legislation given their billing systems, accounting practices etc. Those remain open questions.

(2) We note that certain elements are now proposed to be moved to the regulations. We understand the rationale for that, but in respect of setting new RPP prices and the GA modifier under Part II in particular it is critical that the regulations reflect our current understanding of the approach to be used by the OEB in performing those tasks.

(3) We understand that RPP prices and the GA modifier will only apply as of the effective date going forward, but as raised the other day does this require a change to ensure that the shortfall from May 1 to the effective date resulting from our May 1 price change (the forecast $1B GA reduction) will be captured as part of the funding shortfall/reg asset?

(4) The OEB will not be able to perform all of its responsibilities under this Act without information from others (for example, the IESO) and without proper third party accounts. We have included a proposed new provision at the end for this purpose.

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(5) Absent anything else, the OEB's responsibilities would need to be done through a hearing. We propose a new provision at the end that would enable the OEB to perform these responsibilities with or without a hearing.]

A proposal to create Legislation.

An Act to provide for the fair allocation of costs of electricity over time, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

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Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1] These commitments can only be achieved if costs are shared fairly among consumers, today and in the future.

Electricity rates have risen for two key reasons. First, decades of under-investment in the electricity system resulted in the need to invest more than $50 billion in generation, transmission and distribution assets to ensure the system is clean and reliable. Second, the decision to eliminate Ontario's use of coal and produce clean, renewable power has created additional costs.

The actions taken to achieve a clean, modern and reliable electricity system have resulted in significant costs to consumers today. The burden of financing these system improvements and funding key programs has unfairly fallen almost entirely on the shoulders of today's consumers.

The Government of Ontario is committed to ensuring that the costs of financing these investments and the associated charges to consumers are allocated fairly among present and future generations of consumers.

Recognizing that the electricity infrastructure that has been built and the policy decisions that have been made will create benefits for years to come, costs should be allocated fairly over time, so that consumers in the future pay their fair share for the benefits that they receive from the investments already made.

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")

"clean energy benefits" means the value of the benefits determined to be derived by or accruing to the specified consumers as a result of the clean energy initiative, including as a result of clean energy costs; ("French")

"clean energy costs" means the value of the costs allocated to specified consumers as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the estimated amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to contracts for,

(i) renewable energy generation or capacity,

(ii) conservation and demand management,

(iii) energy storage,

(iv) energy efficiency,

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, or

(vi) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

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"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[2] means,

(a) a licensed distributor, ***[OEB Note to Draft: Are Cornwall and Dubreuil intended to be captured]***

(b) a licensed retailer,

(c) the IESO in circumstances where the IESO directly invoices a specified consumer, or

(d) such other person as may be prescribed; ("French")

"fair allocation amount" means the amount determined in under section 15xx;

"financing entity" means an entity established or caused to be established under subsection 17xx (3); ("French")

"Financial Services Manager" means the Financial Services Manager appointed under section 13xx; ("French")

"Financing Plan" means the plan prepared under section 16xx, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means,

(a) a payment obligation incurred in connection with the transfer of a regulatory asset or the refinancing of an existing funding obligation, or

(b) a payment obligation that meets such other criteria as may be prescribed; ("French")

[2] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means the amount determined under section 20xx; ("French")

"investment asset" means the rights and interests described in section 22xx; ("French")

"investment interest owner" means a financing entity that has acquired and holds an investment interest; ("French")

"investment interest" means,

(a) an ownership interest in the investment asset, and

(b) in circumstances where the ownership interest is transferred, the rights and benefits specified in the agreement under which the interest is transferred; ("French")

"invoice amount" means, in respect of an invoice period, the sum of the amounts set out in subsection (2.1) in relation to the provision of electricity in Ontario to a specified consumer; ("French")

"invoice period" means the period in respect of which an invoice amount applies, as specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

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(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and

(b) during the period beginning on November 1, 2017 and ending on April 30, 2047,

(i) every six-month period following the period mentioned in clause (a); or

(ii) any period shorter than six months, as may be prescribed; ("French")

"refinancing" means, subject to the regulations, a redemption, repayment or repurchase of a funding obligation; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right and interest established under section 21xx; ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity in Ontario and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by ~~the specified consumer, by an agent of the specified consumer or by~~ a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")***[OEB Note to Draft: See NTDs below]***

"transfer" means [TBD]; ("French")

"unit sub-metering" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

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1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to the regulations, the invoice amount for a specified consumer in respect of an invoice period includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following amounts in respect of the invoice period:

    i. The commodity price of the electricity ~~used~~. ***[OEB Note to Draft: The word "used" is not in ORECA, and we are not sure why it would need to be added now.]***

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998* and in effect on April 30, 2017. ***[OEB Note to Draft: We understand that the addition of the reference to April 2017 is to address the fact***

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that the OESP charge is coming off the bill on May 1. However, note also that (i) there will be another change to the THESL rates for the residential service class effective May 1 – a rate rider of 8 cents/month is coming off; and (ii) the April 30th bill will still have the full RRRP charge (as will the May 1st bill).]

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable by the consumer under Part IX of the *Excise Tax Act* (Canada) in respect of the amounts mentioned in subparagraphs i, ii and iii;

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO or a ~~other~~ person prescribed as an electricity vendor~~entity~~, such amounts as may be prescribed in respect of the invoice period. ("French")

Same, exclusions

(2.2) Subject to the regulations, an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices in respect of previous invoice periods.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider [of the prescribed type or class].

5. Any other prescribed amounts.

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Effect of invalidity, etc.[3]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect, or any rights or obligations associated with the funding obligation.

Purpose

3xx. (1) The purposes of this Act are,[4]

(a) to ensure that clean energy costs are fairly allocated among present and future specified consumers and reflect the fair allocation; and

(b) to recognize that clean energy benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of amounts in respect of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the clean energy adjustment determined under this Act or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

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[3] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[4] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements on behalf of the Province of Ontario with any person in respect of this Act, including agreements regarding the performance of IESO or electricity vendors under this Act or similar transactions.

Guarantee, indemnification

(4) The Lieutenant Governor in Council may by order,

(a) authorize the Minister of Finance, on behalf of the Province,

(i) to agree to guarantee or indemnify any debts, obligations, securities or undertakings associated with an investment interest, and

(ii) to determine terms and conditions and the amount on which the guarantee or indemnity will be given;

(b) impose terms and conditions, as it considers advisable, on which the Minister of Finance may, on behalf of the Province, agree to guarantee or indemnify as described in subclause (a) (ii); and

(c) specify a maximum liability for the guarantee or indemnity.

PART II
FAIR ADJUSTMENT OF ELECTRICITY RATES

Definitions

6xx. In this Part,

"effective date" means the date determined under section 6.5xx; ("French")

"RPP rate" means the rates determined by the Board under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, which rates are ~~is~~ commonly referred to as the Regulated Price Plan"; ("French")

"specified RPP consumer" means a specified consumer who meets the following criteria:

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1. The consumer is a member of the class of consumers prescribed by the regulations made under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act.

2. The consumer is invoiced ~~subject to~~ the RPP rate. ("French")

Specified RPP consumer, first fair adjustment

6.1xx (1) Despite any order under section 78(3.1) of the *Ontario Energy Board Act, 1998* and despite section 79.16 of that Act, ~~T~~the rates for electricity payable by a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is the rate required for a specified RPP consumer who meets the prescribed criteria to receive a monthly invoice amount that is 25 per cent lower than the monthly invoice amount for that consumer under the comparison rate described in subsection (2). ***[OEB Note to Draft: (1) We assume that the criteria will prescribe the THESL proxy consumer criteria, and will do so in the manner we expect based on our last comments on the draft legislation. (2) We remain concerned that the 25% will "oversmooth", potentially by the amount of the RRRP charge and by the amount of the 8% rebate. Oversmoothing by the amount of the OESP charge may potentially have been addressed by the reference to April 30th in the definition of "invoice amount", but not sure.]***

Comparison rate

(2) The comparison rate is the rate that would be effective May 1, 2017, determined by the Board solely using the method prescribed by the regulations made under clause 79.16 (1) (b) of the *Ontario Energy Board Act, 1998*, without regard to this Act. ***[OEB Note to Draft: (1) This concept has to be a pre-fair adjustment concept. The OEB has already included a portion of the fair adjustment in May prices. And it did so "solely using the method prescribed" in the reg. under 79.16. Unless you somehow recognize that expressly here, we believe you will be oversmoothing. "Without regard to this Act" may not be the right words, but we believe the concept needs to be reflected here. (2) "Without regard to this Act" may also avoid the application of the changes to 25.33 set out later – it isn't clear that they would be applicable at this time, but if there is a chance that they might then it should be clear that they don't apply.]***

Same

(3) For the purposes of subsection (2), the applicable method is the method on the day this section comes into force. ***[OEB Note to Draft: We don't understand the purpose of this section. The method under 79.16 hasn't changed, and it seems to us that this has the potential to exacerbate the problem noted in relation to the above section]***

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Specified consumers (non-RPP), first fair adjustment

6.2xx The monthly global adjustment rate ~~rate for electricity~~ payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on the effective date and ending on April 30, 2018 is adjusted by an adjustment factor set by the Board to reduce the monthly global adjustment rate ~~the rate that would be necessary in order for [the monthly global adjustment rate] in respect of a specified consumer who is not a specified RPP consumer (RPP) and who meets the prescribed criteria to be reduced~~ by the same amount as the difference between the comparison rate referred to in subsection 6.1xx (2) and the rate determined under subsection 6.1xx (1). ***[OEB Note to Draft: (1) As worded, this section would have the OEB setting electricity prices for these consumers. We understood that this was not the intention. If that is now the intention, please advise – note that other issues will then have to be addressed. Assuming that you are staying with the "GA modifier" approach as we understand it, we have revised along those lines. Note that the IESO is going to have to calculate the fair adjustment-adjusted GA for these consumers based on the OEB's modifier – are you going to amend 429/04 accordingly? And will the IESO have the systems in place to settle with LDCs on that basis? (2) The reference to the GA reg has been added because some customers pay GA on the basis of an estimated rate and others on the basis of actuals. That may or may not completely address the issue, but we believe it helps.]***

Determination by Board

6.3xx The Board shall determine the rates mentioned in section~~s~~ 6.1xx and the adjustment factor mentioned in section 6.2xx no later than seven business days after the day this section receives Royal Assent. ***[OEB Note to Draft: The OEB will not be able to meet this timeline unless the methodology to be used to set the prices and the GA modifier is what we understand them to be today.]***

Implementation of rates

6.4xx Each electricity vendor, ~~[specified consumer who provides electricity to a sub-meter customer and unit sub-meter provider who provides unit sub-metering for a specified consumer]~~ shall, no later than seven business days after the day on which the Board determines the rates and adjustment factor under section 6.3xx, adapt ~~is billing practices and~~ its invoices to reflect the new rates and the application of the adjustment factor. ***[OEB Note to Draft: (1) We suggest that this section should be deleted. First, it is not necessary – the responsibility of the LDC is to bill the rates then in effect, not to have its systems adapted by a given date. Second, what if the prices don't take effect on the 7th business day? Are LDCs going to be billing the new rates in advance of the date on which they take effect? (2) We do not know whether distributors will be able to do this – 7 business days is enough for a straight RPP price change, but unknown for the GA modifier. (3) We don't understand the purpose of referring to billing practices***

here – please advise as to what about their billing practices is going to change. (4) If you delete this section, other sections below will need to be modified accordingly.]

Effective date

[OEB Note to Draft: (1) This section doesn't work if Royal Assent happens on a date that is later than 7 business days before the end of June. If Royal Assent is later, there may be no new rates in place on July 1. We have therefore changed "earlier of" to "later of". (2) We assume that month means calendar month notwithstanding the deletion of the word "calendar" (but would appreciate confirmation) - RPP prices could come into effect on a day other than the first day of the month, but it is not clear whether the same can be said for the modified GA rates. This would need to be discussed with the IESO.]

6.5xx The rates and adjustment factor determined under section 6.3xx are effective on the later ~~earlier~~ of the following days:

1. The first day of the month immediately following the last day of the seven business- day period referred to in section 6.4xx.

2. July 1, 2017.

Transition

[OEB Note to Draft: Is item 1 circular? .Compliance with section 6.4 requires adapting bills within 7 BD of the date on which the Board sets the rate/adjustment factor. So why would there being less than 7 BD between that date and the effective date of the rates be relevant to compliance under 6.4?]

6.6xx (1) This section applies if an electricity vendor ~~, specified consumer or unit sub-meter provider~~ is unable to comply with section 6.4xx for one of the following reasons:

1. There are fewer than seven business days between the day of the Board's determination of rates and the adjustment factor under section 6.3xx and the effective date.

2. Technical or operational reasons.

Same

(2) In the circumstances described in subsection (1), the electricity vendor ~~, specified consumer or unit sub-meter provider~~ shall,

(a) adapt its invoices as soon as possible and, in any event, no later than August 1, 2017; and ***[OEB Note to Draft: It is not known whether LDCs can***

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implement this by August 1, particularly for the GA modifier. Note that you left 6 months for ORECA.]

(b) ensure that any specified consumer ~~or sub-meter customer~~ invoiced at ~~a~~ rate ~~rate~~ higher than the applicable rates determined by the Board under section 6.3 or invoiced a monthly global adjustment rate that does not reflect the application of the adjustment factor determined by the Board under section 6.3 receives the difference between the rates or global adjustment amount shown on their invoice for electricity consumed on and after the effective date ~~and the applicable rate~~ and the rates or monthly global adjustment as determined under section 6.3 as a lump sum credit on the first invoice received ~~issued~~ after the invoices have been adapted or by such other means as may be prescribed by the regulations. ***[OEB Note to Draft: LDCs may still struggle with this – worth verifying feasibility with the LDCs]***

Subsequent fair adjustments

7xx. The Lieutenant Governor in Council may make regulations prescribing the methodology to be applied by the Board to determine rates for electricity payable by specified RPP consumers under section 79.16 of the *Ontario Energy Board Act, 1998* ~~specified consumers and sub-meter customers~~ during the period beginning on May 1, 2018 and ending on April 30, 2022. ***[OEB Note to Draft: Either the OEB is setting RPP prices under this section, in which case it should be worded as such, or the OEB is setting RPP prices under section 79.16. This provision as drafted did not appear to us to achieve either purpose. We have proposed to clarify that the regulations affect the setting of prices under section 79.16 because the concept of a "specified RPP consumer" is defined by reference to section 79.16 and therefore seems to us to pre-suppose that we are setting RPP prices under 79.16 for this period.]***

7.1xx The monthly global adjustment rate payable in accordance with regulations made pursuant to section 25.33 of the *Electricity Act, 1998* by a specified consumer who is not a specified RPP consumer for the period beginning on May 1, 2018 and ending on April 30, 2022 shall be adjusted by an adjustment factor determined by the Board in accordance with the regulations.

~~**Sub-meter customers**~~

~~**7.1xx** A specified consumer who provides electricity to a sub-meter customer and any unit sub-meter provider who provides unit sub-metering for the specified consumer shall ensure that the rate payable by each sub-meter customer is the applicable rate determined under this Part.~~ ***[OEB Note to Draft: (1) We do not understand why anyone other than a consumer that is sub-metered by a licensed USMP needs to be captured by this legislation. If a landlord/building owner passes through the cost of electricity to***

tenants in a building that is not sub-metered, it would be included in rent or billed on a basis like square footage or number of units. These kinds of consumers do not pay a regulated rate today, they pay the costs passed through by the landlord/building owner. (2) In terms of consumers served by a USMP, we believe that their obligation should be to pass through the fair adjustment. We propose something for that below.]

7.2xx (1) This section applies if,

(a) a specified consumer provides to a sub-metered consumer electricity in respect of which the specified consumer is entitled to a fair adjustment under this Part; and
(b) an invoice for the electricity is issued to the sub-metered consumer by a unit sub-meter provider providing sub-metering for specified consumer.

(2) Every unit sub-meter provider providing unit sub-metering for the specified consumer shall, in accordance with such requirements as may be prescribed, ensure that each sub-metered consumer referred to in subsection (1)(a) receives its share of the benefit of any fair adjustment that is provided to the specified consumer under this Part.

PART III
CLEAN ENERGY ADJUSTMENT

Specified consumers to pay

8xx. (1) Upon receipt of an invoice that includes an amount in respect of the clean energy adjustment, a specified consumer shall pay the amount to the electricity vendor, as agent of the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether the clean energy adjustment was determined in a manner that was inconsistent with this Act; and

(b) whether the amount payable in respect of the clean energy adjustment relates to funding obligations that were incurred in a manner that was not in material conformity with the Financing Plan.

Indebtedness of specified consumer

(4) An unpaid amount that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner to the extent of each owner's respective interest in the investment asset.

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Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer.

~~**Recovery from sub-meter consumers**~~

~~(6) A specified consumer who provides electricity to a sub-meter customer may recover amounts in respect of the clean energy adjustment payable under this section from each sub-meter customer on a pro rata basis.~~ ***[OEB Note to Draft: We do not understand the need for this section. If the overall framework needs for USMPs to recover these amounts, then that should presumably be included. Something that simply allows them to recover the CEA doesn't seem to us to work in the context of their acting as agent for the unlicensed distributor and where the total CEA payable for the building should presumably be on the bulk meter bill. If you are retaining some residual reference to consumers that are in buildings that are not sub-metered, then at a minimum we believe that USMPs should be backed out of this.]***

Irrevocability of amount

9xx. (1) An amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness resulting from the clean energy adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a clerical, typographical or calculation-related error by the electricity vendor.

Determination of clean energy adjustment
Financial Services Manager to determine

10xx. (1) The Financial Services Manager shall determine the clean energy adjustment payable by all specified consumers in respect of each month in a reference period by adding the estimated finance amount in respect of the reference period to the true up amount in respect of the reference period.

Estimated finance amount, true up amount

(2) The estimated finance amount and the true up amount shall be determined in accordance with the regulations.

Regulations re true up amount

(3) The regulations under subsection (2) shall have regard to the following principles:

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1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between the estimated and actual finance amount for the immediately preceding reference period,

    ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption.

Financial Services Manager to notify Board

(4) The Financial Services Manager shall, in accordance with the regulations, notify the Board of the clean energy adjustment and such other information related to the determination of the clean energy adjustment as may be prescribed. ***[OEB Note to Draft: The regulations will need to provide a timeline within which this information has to be provided if there are timelines for the setting of rates applicable to the OEB under (5)]***

Board to determine rates

(5) The Board shall, in accordance with the regulations, determine the rate at which specified consumers are invoiced to recover the clean energy adjustment as notified to it under subsection (4) in respect of the reference period. ***[OEB Note to Draft: (1) Do you need to contemplate the possibility that different CEA rates may be required for different specified consumers (i.e., consumers on RPP vs. others?) (2) The OEB will likely need consumption information from the IESO in order to do this. See our proposed new section at the end.]***

IESO to receive amounts

11xx. (2) The IESO shall, as an agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the regulations and the market rules made under section 32 of the *Electricity Act, 1998*.

Account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be deposited promptly into an account established for the purposes of receiving those amounts:

1. Amounts described in subsection 11xx (2).

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2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8xx (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owner, be received and held in trust by the IESO for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Electricity vendor to invoice specified consumers

12xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the amount payable by the consumer in respect of the clean energy adjustment, as determined by applying the rate set by the Board under subsection 10xx (2) and in accordance with the regulations. ***[OEB Note to Draft: It remains unclear to us whether this is a separate invoice or the normal utility bill. Requiring LDCs to issue separate bills will increase their billing costs and create customer confusion.]***

Electricity vendor to report

(1.1) Each electricity vendor shall, in accordance with the regulations, promptly report to the IESO the total amount invoiced to its specified consumers in respect of the clean energy adjustment, the amount collected and such further information as may be prescribed.

Electricity vendor to collect

(2) Each electricity vendor shall, as agent of the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers in accordance with the regulations. ***[OEB Note to Draft: Having LDCs use a collection process for the CEA that is different from a collection process for the rest of the bill will be an issue for them (assuming that the CEA is invoiced on the normal utility bill). The OEB has requirements that LDCs have to follow in relation to invoicing and that apply to the rest of the bill. Depending on what collection means, there could be a conflict.]***

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on

a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges in respect of the same period. ***[OEB Note to Draft: See our concerns on our earlier draft about whether LDCs can track this way]***

Held in trust

(4) Payments received by an electricity vendor from or on behalf of specified consumers shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be received by and held by each electricity vendor in trust for the benefit of the investment interest owners.

Remittance to IESO

(5) Each electricity vendor shall remit amounts described in subsection (5) to the IESO for the benefit of the investment interest owners in accordance with the regulations.

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) Subject to subsection (2), Ontario Power Generation Inc. is appointed as the Financial Services Manager for the purposes of this Act.

Replacement

(2) The Minister may terminate an appointment of a Financial Services Manager and may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of ~~funding obligations and~~ the Board's determination of the clean energy adjustment rate under ~~in accordance with~~ subsection 10(5)~~xx~~. ***[OEB Note to Draft: Our proposed new provision at the end would eliminate the need for this item. In addition, why does the OEB need information regarding "funding obligations" and the determination of the CEA itself,***

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which we understand to be a global dollar amount that we are expected to take from the FSM without question to derive the CEA rate?]

2. Providing information to the IESO in respect of obligations under Part III.

3. Such other matters as may be prescribed.

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. ***[OEB Note to Draft: We still do not know what these costs are; what the purpose of the review is; what process we are expected to use for this review and whether an order of some kind will be required; and whether the review has any consequence for anything else that we need to think about in relation to this responsibility. We understand that some of this may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end]***

FAIR ALLOCATION AMOUNT

Financial Services Manager to calculate fair allocation amount

15xx. (1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period, having regard to the need to align that amount with the finance amount payable during the reference period, for the purpose of fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of the reference period.

Timing of calculation

(1.1) The Financial Services Manager shall calculate a fair allocation amount in respect of each reference period before any funding obligation is incurred [by a financing entity during the reference period].

Amount

(1.2) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which, if this Act had not been enacted, the estimated clean energy costs and estimated clean energy benefits allocated to specified consumers in respect of the reference period would have exceeded the estimated amount of the adjustments provided for under section 25.33 of the *Electricity Act, 1998* and the regulations made under that provision that would have been borne by the specified consumers in respect of clean energy costs for the reference period.

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2. A portion of the value of any fair adjustment that has been made under Part II in respect of any previous reference period.

Principles

(2) In calculating the estimated clean energy costs and estimated clean energy benefits to be allocated to specified consumers in respect of a reference period, the Financial Services Manager shall [comply with the regulations and] have regard to the following principles:

1. Clean energy costs allocated to specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits allocated to the specified consumers in respect of a reference period should be determined in accordance with the regulations.
3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The time value of money or the rate of inflation, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers in respect of each reference period.

    iii. The expected electricity consumption rates in respect of each reference period.

Method

(3) The Financial Services Manager shall calculate a fair allocation amount in accordance with such methods as the Financial Services Manager considers appropriate, having regard to the requirements of this Act.

Notification to Minister

(4) The Financial Services Manager shall notify the Minister of the methods used to calculate the fair allocation amount and any changes to those methods.

Effective date

(6) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Minister in writing.

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Publication

(7) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring an investment interest in accordance with this Act.

Plan to be provided to Minister

(1.1) The Financial Services Manager shall provide the Financing Plan to the Minister.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align with the estimated finance amount, as determined in accordance with the regulations, that would, subject to any refinancing, become due and payable during a reference period with the fair allocation amount determined in respect of the reference period under this Part as of the time of the incurrence, in each case after reducing the fair allocation calculation by the amount of any fair adjustment in respect of the reference period.

2. Incurrences should be implemented in a manner that, in the opinion of the Financial Services Manager, is reasonable, cost effective and that reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in amounts payable in respect of the clean energy adjustment in respect of the reference period unless,

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(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations incurred would not be payable during the reference period in an amount that exceeds the [difference between the fair allocation amount in respect of the reference period and the amount of the fair adjustment in respect of the reference period].

Other reports

(3.1) The Financial Services Manager shall submit to the Minister such reports and information as the Minister may require from time to time and shall, if required by the Minister to do so, examine, report and advise on any question relating to the Financing Plan.

Confidentiality

(5) The following are deemed to be records subject to clauses 18 (1) (c) and (d) of the *Freedom of Information and Protection of Privacy Act*:

1. The Financing Plan.

2. Reports referred to in subsection (3.1).

3. Any other document that would reveal information contained in the Financing Plan or the reports.

Amendments to plan

(6) The Financial Services Manager may amend the Financing Plan at any time.

Same

(7) In the event that the Financing Plan is amended, any reference in this section to the Financing Plan is deemed to be a reference to the plan as amended.

Implementation of Financing Plan

17xx. (1) The Financial Services Manager shall incur funding obligations in material conformity with the applicable Financing Plan.

Same

(2) For greater certainty, subsection 17xx (5) applies despite the failure of the Financial Services Manager to comply with subsection (1). ***[OEB Note to Draft: There is no 17(5).]***

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Financing entities

(3) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

Prohibition

(3.1) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, the Board, Ontario Power Generation Inc., the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation or other agreement. ***[OEB Note to Draft: We remain of the view that the OEB's assets should be immune from recourse whether or not the OEB has responsibilities under this Act.]***

Effect of amendment to fair allocation amount

(4) Each funding obligation incurred and each transfer made by a financing entity is deemed to be consistent with the Financing Plan and [the fair allocation amount].

PART V
THE REGULATORY ASSET

IESO funding shortfall

20xx. (1) The IESO funding shortfall for each month shall be determined in accordance with the regulations.

Electricity vendors to provide information

(2) Electricity vendors shall provide to IESO such information as IESO may reasonably request for the purposes of determining the IESO shortfall under subsection (1) and such further information as may be prescribed.

Same

(3) IESO may rely on information provided by electricity vendors for the purposes of the determination under subsection (1).

Variance account to be established, maintained

20.1xx (1) The IESO shall establish and maintain a variance account for the purposes of this section.

Recording in variance account

(2) The IESO shall record the following in the variance account:

1. The amount of the IESO funding shortfall for each month.

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2. All payments received by the IESO resulting from the exercise of the right of recovery under section 21xx and any transfer under section 22xx.

3. Such other adjustments as may be prescribed.

Recording determinative

(3) Subject to any finding of [manifest error], a recording by the IESO in the variance account of the balance is, as of the time of the recording, determinative of the balance at the time.

Rights of investment interest owner

(4) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 22x, affect the rights of the investment interest owner acquired under the transfer.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Limitation

(2) Despite subsection (1), the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2022.

Board to set rates

(3) The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. ***[OEB Note to Draft: We understand that some details may be suitable for regulations, but we are not convinced that this can override the OEB Act provisions relating to hearings. This is addressed in our proposed new provision at the end. If this is going to be implemented through RPP prices, O. Reg. 95/05 will presumably need to be amended accordingly at some point.]***

Same, limitations

(4) The Board's powers under subsection (3) shall be exercised in accordance with the regulations.

Transfer of regulatory asset

22xx. (1) The IESO may from time to time transfer all or a portion of the regulatory asset to any financing entity.

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Same

(2) Upon receipt by IESO of payment in consideration of a transfer of all or a portion of the regulatory asset, the transfer shall be valid and enforceable against the IESO and the IESO shall retain no further right, title or interest in, or any obligations in respect of, the regulatory asset or in the investment asset created by the transfer.

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment asset owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Effect of transfer

24xx. (1) The first transfer of the regulatory asset or a portion of it creates the investment asset.

Same

(2) Upon any transfer of all or a portion of the regulatory asset to a financing entity, the investment asset resulting from the transfer is immediately vested in the financing entity, free and clear of any adverse claim, and the financing entity becomes an investment interest owner and acquires an investment interest**.**

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Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, invoice, collect, receive and recover amounts in respect of the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover amounts in respect of the clean energy adjustment that are imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for amounts in respect of the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of amounts in respect of the clean energy adjustment.

6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Not affected by failure to impose etc. clean energy adjustment

(1.1) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect amounts in respect of the clean energy adjustment.

No set off, etc.

(2) The investment asset shall not be set off,

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(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(3) The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. ***[OEB Note to Draft: Presumably, this means that the rights and interests will be through the electricity vendors acting as their agents? If so, what does that mean for LDCs?]***

Collective action required

(4) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms.

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the investment asset owner a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

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Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

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Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

Notice required

(7) The secured party shall be entitled to exercise the rights of an investment interest owner only after the secured party has given notice of the enforcement of its security interest to the IESO.

Definition

(8) For the purposes of this section, a security interest is perfected when it is perfected as described in the *Personal Property Security Act*.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of amounts in respect of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect amounts in respect of the clean energy adjustment, including defaults on any required remittance of amounts in respect of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

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Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required to be taken under the Financing Plan or in relation to the determination of the fair allocation amount.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or the Board, or against a member of the Board, ~~OEB~~ for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. ***[OEB Draft Note: Under the OEB Act, Board members are specifically noted as not being employees of the OEB. It is imperative that they also be covered by this provision.]***

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under section 5xx unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[5]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[5] FLS - see s. 51 of the Electricity Act, 1998

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37.1xx. Each electricity vendor, the IESO, the Financial Services Manager and such other person as may be prescribed shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under this Act, in the form and manner and within the time required by the Board.

37.2xx Despite anything to the contrary in the *Ontario Energy Board Act, 1998*, the Board may exercise any of its responsibilities under this Act with or without a hearing.

Regulations

38xx. The Lieutenant Governor in Council may make regulations in respect of the following matters:

1. [6]Governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations.

2. Defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act.

x. Prescribing types of payment obligations that constitute funding obligations;

x. governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

x. governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments;

x. governing the inclusion of information about the clean energy adjustment and any other matters provided for under this Act on invoices issued to specified consumers, including the form that the information must take and the form of the invoices and any notice to be provided to the specified consumer under this Act[7];

x. prescribing the time within which any action required by this Act may be required to be done;

[6] FLS - see s. 78 (1) of the Climate Change Mitigation and Low-carbon Economy Act, 2016 - paras. 1 and 2.
[7] FLS - see *OEBA s.79.17 and 88(1)(z.11) and (z.12)*

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x. Providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* is amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017*, which activities may include,

(iv) incurring liabilities in relation to the regulatory asset

(v) transferring the regulatory asset for consideration;

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*;

[OEB Note to Draft: In the interests of time, we have not reviewed the section below in detail. However, without a better understanding, it raises a question about the continued viability of section 79.16(3) of the OEB Act, which we address below.]

200.1xx (1) Subsection 25.33 (1) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(1.1) Subsection 25.33 (2) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clauses:

(c) amounts paid to or received from a [prescribed] financial services entity or [a financing entity prescribed under] the *Ontario Fair Hydro Plan Act, 2017* and any related amounts; and

(d) amounts collected from consumers who are [specified consumers within the meaning of] the *Ontario Fair Hydro Plan Act, 2017* in respect of the clean energy adjustment and any related amounts.

(2) Subsection 25.33 (3) of the Act is amended by adding the following paragraph:

4. A consumer who is,

   i. a [specified consumer within the meaning of] the *Ontario Fair Hydro Plan Act, 2017*, or

   ii. prescribed by the regulations [made under the *Ontario Energy Board Act, 1998*].

(3) Clause 25.33 (4) (b) of the Act is amended by adding "or as may be required under a regulation made under the *Ontario Fair Hydro Plan Act, 2017* or the *Ontario Energy Board Act, 1998*" at the end.

(4) Subsection 25.33 (5) of the Act is amended by adding "or under the *Ontario Fair Hydro Plan Act, 2017*" at the end

201x. Section 53.1 of the Act is amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and

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engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities, subject to the right to be paid by the financing entities for those services.

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Despite any other provision of this Act, the *Business Corporations Act* or any other Act,

(a) the assets and liabilities of a special purpose financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity.

Definition, financing entity

(1.4) For the purposes of this section, "financing entity" has the same meaning as in the *Fair Hydro Plan Act, 2017*.

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* is amended by adding the following paragraph:

~~6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.~~ ***[OEB Note to Draft: We remain of the view that this is ill-advised. On the earlier draft we noted that, among other things, this could affect the setting of payment amounts for OPG by requiring us to include the effect, if any, of the Fair Hydro Plan on OPG's financing costs in determining a reasonable cost of capital, which represents a major cost component of the price setting and could adversely affect all ratepayers. If this were to be an objective, it will by definition have to be considered whenever we exercise any part of our mandate, and we understand that this is not the intention. In the context of distribution and transmission rates, this could potentially affect utility financial viability or reliability of service if it comes into play in setting their rates.]***

205x. Subsection 70 (2.1) of the Act is amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

205.1x Section 70 of the *Ontario Energy Board Act, 1998* is amended by adding the following subsection:

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Fair Hydro Plan Act, 2017* and the regulations made under it.

206x. Section 78.1 of the Act is amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

207xx. Section 79.16 of the *Ontario Energy Board Act, 1998* is amended by deleting subsection (3). ***[OEB Note to Draft: We are concerned that, with the different changes set out in this Act (including notably the changes to 25.33 above), the impact of which is not yet known, the obligation to clear variance accounts will not be feasible in the way that it is today, and could cause the OEB to act in violation of this subsection. If it is relevant in the future, it can be added to O. Reg. 95/05].***

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Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Re_ Ontario Fair Hydro Plan.rtf

From: Martine Band [Martine.Band@oeb.ca]
To: Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; Mary Anne Aldred [MaryAnne.Aldred@oeb.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; rramchandani@torys.com [rramchandani@torys.com]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; mouche1961@gmail.com [mouche1961@gmail.com]
Subject: Re: Ontario Fair Hydro Plan
Date: Wednesday, April 26, 2017 12:53:56

Thanks. Your email came in through my home address just as our OEB email started working again.

Martine M. N. Band

Associate General Counsel

Ontario Energy Board

Direct Line: 416-440-8117

From: Kacaba, Jennifer (ENERGY) <Jennifer.Kacaba@ontario.ca>
Sent: April 26, 2017 12:38 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY);

Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; Mary Anne Aldred; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI); mouche1961@gmail.com; Martine Band
Subject: RE: Ontario Fair Hydro Plan

All - Thank you for the detailed comments that you provided on Saturday and Sunday. Please find attached the next turn of the legislation. We have tried to balance the comments that we received to address the points that you have raised. This draft does not reflect the drafting points that were raised over Monday and Tuesday and we will reflect those points in our next instructions to legislative counsel. Please review and identify any significant substantive issues by 6 p.m. today. We continue to work toward pens down on Friday, meaning the draft that we have at that point in time will be proposed for introduction in the House. Thank you again for your contributions to this process.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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From: Kacaba, Jennifer (ENERGY)
Sent: April 20, 2017 5:59 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS); rramchandani@torys.com
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com);

LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)

Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April 15, 2017 10:06 PM
To: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Nelms, Scott (MOF); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com); John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com); Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina'; 'Benaiah, Ian'; Nevison, Gary (Gary.Nevison@tdsecurities.com); Thom, Trevor (Trevor.Thom@tdsecurities.com); Akman, Steven (Steven.Akman@tdsecurities.com); Thompson, Susan (Susan.Thompson@tdsecurities.com); Manii, David (david.manii@tdsecurities.com); 'Feldman, Michael'; 'Persaud, Donnie - Debt Capital Markets'; 'Hill, Krista'; 'Turnbull, Vickie'; 'Dal Bello, David'; 'Mansoori, Nina'; 'Sebastiano, Rocco'; 'Fitzpatrick, Michael F.'; michael.boll@ieso.ca; Kim Marshall; Veinot, Cindy (TBS); 'Glenn Zacher'; 'O'Brian, Adam'; 'Emes, Aaron'; 'Peter Hamilton'; 'JORDA Jenny -FIN & C CTRL'; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS)
Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

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RE_ Ontario Fair Hydro Plan.rtf

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Subject: RE: Ontario Fair Hydro Plan
Date: Sunday, April 23, 2017 11:20:24
Attachment 1: image182d05.JPG
Attachment 2: Blackline_(MOE-Draft).pdf
Attachment 3: Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.DOCX

All – please find attached OPG and Torys' consolidated comments on the draft legislation circulated below (blacklined to that draft). Please note that this draft remains subject to the continuing review of OPG.

Best Regards,

Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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From: Kacaba, Jennifer (ENERGY) [mailto:Jennifer.Kacaba@ontario.ca]
Sent: April-20-17 5:59 PM
To: Rehob, James (ENERGY) <James.Rehob@ontario.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Hume, Steen (ENERGY) <Steen.Hume@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Leslie.Wong@opg.com; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) <tyler.mcauley@opg.com>; John.S.Lee@opg.com; JUDY.WILSON@blakes.com; Stephen.Ashbourne@blakes.com; Bryson.Stokes@blakes.com; 'Alan Hibben' (alan.hibben@rogers.com) <alan.hibben@rogers.com>; Brad.Purkis@tdsecurities.com; Maharukh.Hilloowala@tdsecurities.com; Michael.Wolff@tdsecurities.com; Harold.Holloway@tdsecurities.com; 'Niehaus, Katrina' <Katrina.Niehaus@gs.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; Nevison, Gary (Gary.Nevison@tdsecurities.com) <Gary.Nevison@tdsecurities.com>; Thom, Trevor (Trevor.Thom@tdsecurities.com) <Trevor.Thom@tdsecurities.com>; Akman, Steven (Steven.Akman@tdsecurities.com) <Steven.Akman@tdsecurities.com>; Thompson, Susan (Susan.Thompson@tdsecurities.com) <Susan.Thompson@tdsecurities.com>; Manii, David (david.manii@tdsecurities.com) <david.manii@tdsecurities.com>; Feldman, Michael <mfeldman@torys.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Hill, Krista <khill@torys.com>; 'Turnbull, Vickie' <vickie.turnbull@rbccm.com>; 'Dal Bello, David' <david.dalbello@rbccm.com>; Mansoori, Nina <nmansoori@torys.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Fitzpatrick, Michael F.' <MFitzpatrick@hunton.com>; michael.boll@ieso.ca; Kim Marshall <Kim.Marshall@ieso.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; 'Glenn Zacher' <GZacher@stikeman.com>; 'O'Brian, Adam' <aobrian@hunton.com>; Emes, Aaron <aemes@torys.com>; 'Peter Hamilton' <PHamilton@stikeman.com>; 'JORDA Jenny -FIN & C CTRL' <jenny.jorda@opg.com>; maryanne.aldred@ontarioenergyboard.ca; Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>
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Subject: RE: Ontario Fair Hydro Plan

All - Please find attached the next turn in the consultation draft (v.3) of the proposed legislation. We have been working to address the feedback that you provided earlier in the week. A number of points remain in progress. As with the earlier versions, by sharing this document, we hope to continue to advance our discussions.

Our timeline has been extended and we are now working to a pens down date of April 28th. We will not get another extension. Accordingly, we ask for your detailed, written comments on the draft, which we require no later than Sunday at noon.

We will continue to work on the bill in the interim, so earlier instructions are helpful to us. With your input on this timeline, we expect to be able to provide one more circulation around Tuesday or Wednesday next week.

We have not had the opportunity to add notes or to update our crosswalk to the Blakes summary document.

We look forward to receiving your written comments.

Jennifer

Jennifer J. Kacaba

Counsel

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

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From: Kacaba, Jennifer (ENERGY)
Sent: April 17, 2017 12:00 PM
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Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: RE: Ontario Fair Hydro Plan

Please find attached a further turn of the consultation draft. This document continues to be a work in progress. We have not had the opportunity to add notes or update our tracking table. We also have not yet considered the comments that we received this morning. We look forward to seeing you at 1.

Jennifer

Jennifer J. Kacaba

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From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
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Cc: 'Myers, Jonathan'; Suzie Gignac (suzie.r.gignac@ca.ey.com); Blake Langill (blake.w.langill@ca.ey.com); LeeAnne.Probert@ca.ey.com; Kandeepan, Ken (OFA); Hosick, Sarah (TBS)
Subject: Ontario Fair Hydro Plan

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

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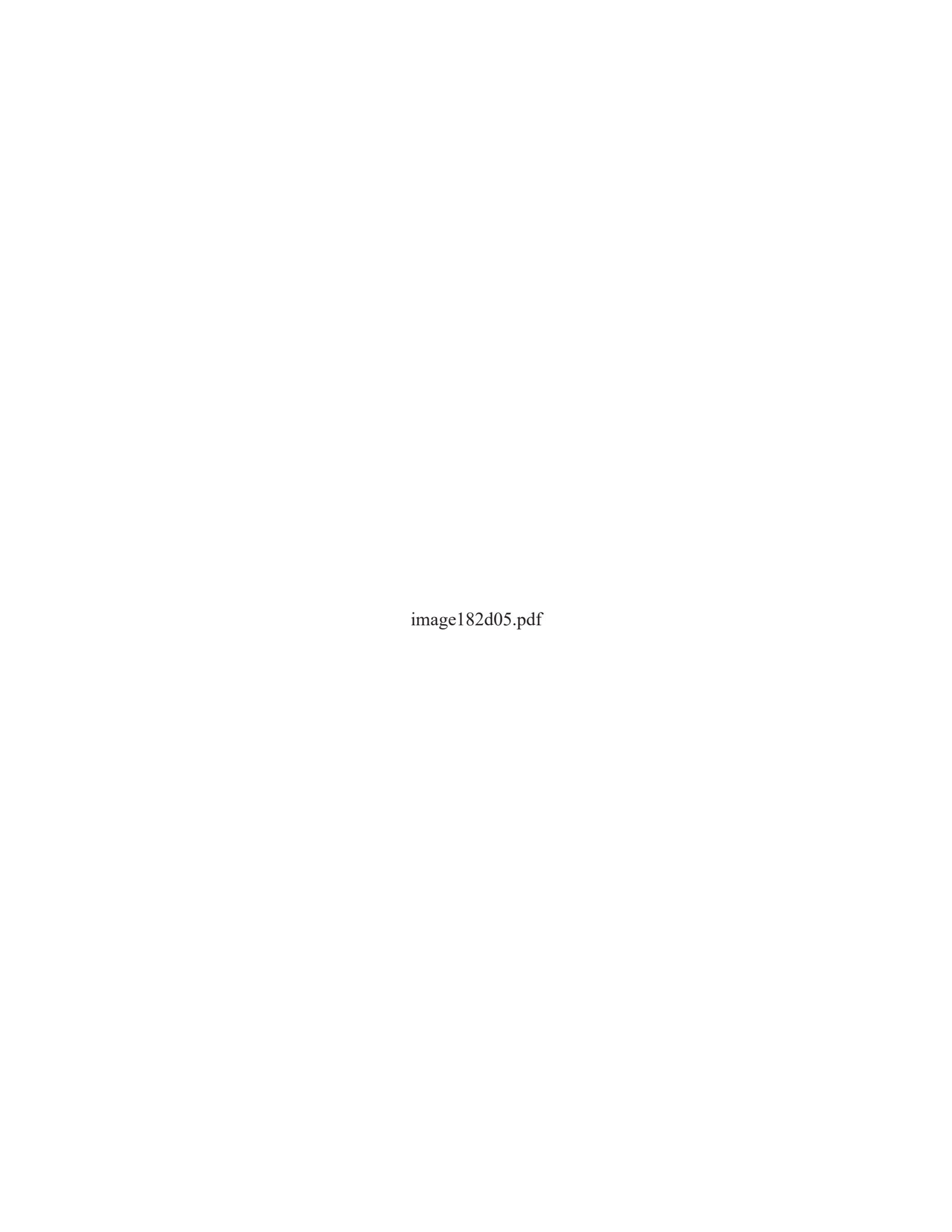
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Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable **the** phasing out of coal fired generation, ~~modernizing sites and facilities in the Province for the generation of electrical energy and the production therefrom~~**the modernization of electricity generation facilities**,[2] and conservation and demand management **initiatives**.

The Government of Ontario is committed to ensuring that the costs of these investments~~, and the raising of money to fund the investments,~~[3] are allocated fairly among present and future generations of consumers~~.~~ **, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. [NTD: Delete references to "raising of money". This may imply a tax scheme. The**

[1] Note: please see the preamble of the *Green Energy Act, 2009*.
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".
[3] ~~Note: please see opening flush of s. 92A (4) of the Constitution Act, 1867~~

references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits ~~determined~~ to be derived by ~~the~~**[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs**, as determined by ■ and described in ■**; ("French")

"clean energy costs" means, in respect of a reference period, ~~the value of~~ the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the ~~estimated costs~~**amounts** to be ~~incurred~~**reflected in adjustments made** by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to ~~contracts for~~,

(i) **contracts for** renewable energy generation or capacity,

(ii) **contracts for** conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) **contracts for** natural gas generation ~~and~~**or** capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed, ~~or~~

(v) payments ~~made or expected to be made~~ under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[43] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the ~~determination of~~**adjustment to** the rate payable for electricity **determined** in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** **for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights**]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

[43] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of ~~the regulatory asset owner or~~ an investment ~~asset~~**interest** owner ~~under section x~~**as prescribed in the Regulations**; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the ~~investment asset~~**property rights** created as described in section 22xx; ("French")

"investment ~~asset~~**interest** owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset~~, which entitles an investment asset owner to the rights and benefits specified in the agreement under which the ownership interest is transferred~~;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity **and related services [NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means **each of**,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, **and** **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the ~~Fair Allocation~~**Financing** Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment ~~asset~~**interest** owner by applying the net proceeds obtained by the **investment interest** owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity **and related services**, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" ~~means~~**includes** an assignment, conveyance, disposition or sale **and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which**> *IESO purports to dispose of* <**or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest**; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or ~~the~~ has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

iv. The amount of any harmonized sales tax payable ~~[by the consumer?]~~ under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

[NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to ~~the use of~~ electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

ii. A charge labelled as a "specific service charge" or "retail service charge".

iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

~~**Transfer**~~

~~(4) For greater certainty, a transfer of the regulatory asset or a portion of the regulatory asset includes any act of the IESO by which the< *IESO purports to dispose of* >its interest in the regulatory asset with the result of a named person becoming the owner of an investment interest.~~

Effect of invalidity, etc.[54]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if ~~some~~**one or more** provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect **the validity or enforceability of** a funding obligation ~~that was~~ incurred under this Act before the day that the provision ~~was~~**is** held to be invalid or ~~ceased~~**ceases** to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[65]

[54] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*

[65] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

(a) to ~~ensure that clean energy costs are fairly~~**fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; [NTD: See comments above regarding references to raising money] and [NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time** ~~and that the process by which the Province raises money to fund the costs reflects the fair allocation; and~~**"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

Protection and assurances

Prohibition

5xx. (1) The Crown shall not **do or cause or permit any agent of the Crown to** do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection ~~or,~~ remittance **or recovery** of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce**, alter or impair** the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset**, investment interest** or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving **or amending** of a regulation under this **Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other** Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the ~~Province of Ontario~~**Crown** with any person in respect of this Act, **or in relation to this Act,** including agreements regarding financial

commitments, financial arrangements, indemnities**, guarantees** or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations
(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition
6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act **as of May 1, 2017**; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by **[**the specified consumer, by an agent of the specified consumer or by**] [NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination
(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be

payable by a representative consumer in order for the representative consumer to receive ~~a~~**[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any **licensed** unit sub-meter provider who provides unit sub-metering for **the sub-meter customer on behalf of** the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate ~~mentioned~~**described** in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or **licensed** unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or **licensed** unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the ~~applicable~~ rate **described in subsection (2)** receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

~~Specified~~Electricity vendor to invoice specified consumers ~~to pay clean energy adjustment~~

8xx. ~~(1~~ **(1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. [NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

>Electricity vendor to collect<

*> (2) Each electricity vendor shall, as an agent of the IESO and the investment <**interest owners, collect amounts in respect of**> the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].* <

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes **an amount in respect of** a clean energy adjustment, a specified consumer shall pay ~~the clean energy adjustment~~**such amount** to the electricity vendor, as agent of **IESO and** the investment ~~asset~~**interest** owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(~~2~~**4**) For greater certainty, ~~subsection (1) applies regardless of,~~

(a) ~~whether the~~**each** clean energy adjustment is ~~inconsistent~~**considered to be consistent** with the fair allocation calculation applicable at the time when the payment is due; and

(b) ~~whether the~~**each** clean energy adjustment ~~relates~~**is considered to relate** to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(~~4~~5) An unpaid **amount in respect of a** clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the **specified** consumer to each investment ~~asset~~**interest** owner in respect of each **investment interest** owner's respective interest in the investment asset.

Same

(~~5~~6) The indebtedness mentioned in subsection (~~4~~5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

~~***<Irrevocability of clean energy adjustment>***~~

~~**9xx.** (1) The amount*<of the clean energy adjustment shown on>* an invoice issued to a specified consumer *<under this Act is determinative of the amount of>* the consumer's *<indebtedness created by>* the adjustment and*< is irrevocable upon invoicing the consumer and may not be set off or by passed.>*~~

~~***<Exception>***~~

~~*< (2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor>*.~~

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

   i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

   ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.] [NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment ~~asset~~**interest** owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998*].

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those ~~accounts~~**amounts**:

1. Amounts described in subsection ~~12~~**11xx** (~~4~~**2**).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment ~~asset owner~~**interest owners** in accordance with subsection (~~6~~**5**), be held**, and are deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment ~~asset~~**interest** owners in accordance with the regulations.

Collection of outstanding amounts~~, regulatory asset~~

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect ~~the difference~~**any outstanding IESO funding shortfall** from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

~~**Electricity vendor to invoice specified consumers**~~

>*Irrevocability of clean energy adjustment*<

12xx. (1) The ~~electricity vendor shall issue~~**amount in respect**> *of the clean energy adjustment shown on*< an invoice **issued** to ~~each~~**a** specified consumer ~~for~~>*under this Act is determinative of the amount of*< the consumer's ~~amount of~~>*indebtedness created by*< the clean energy adjustment> *is irrevocable upon invoicing the consumer and may not be set off or by passed.*<

>*Exception*<

> *(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor*<**, which error shall be corrected** in accordance with ~~the regulations~~**section 10xx(2)**.

~~**<*Electricity vendor to collect*>**~~

~~< *(2) Each electricity vendor shall, as an agent of the IESO and the investment* >asset owners, collect< *the clean energy adjustment from specified consumers [in accordance*~~

~~*with the monthly settlement process set out in the market rules made under section 32 of the Electricity Act, 1998].*~~ ~~>~~

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment ~~asset~~**interest** owner in accordance with subsection (5), be held**, and shall be deemed to be held,** in trust for the investment ~~asset~~**interest** owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (~~5~~**4**) to the IESO for the benefit of the investment ~~asset~~**interest** owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager **for purposes of section 16xx of the Act** if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager **for purposes of section 16xx of the Act**.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment ~~asset owner~~**interest owners**.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to **the IESO for distribution to** electricity vendors~~, including the IESO~~, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

~~Financial Services Manager~~Minister to calculate fair allocation amount

15xx. (1) The ~~Financial Services Manager~~**Minister** shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the ~~Financial Services Manager~~**Minister** shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The ~~time value of money or the rate of inflation~~**funding costs associated with the funding obligations**, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected **volumes of** electricity consumption ~~rates~~ for each reference period.

Allocation of fair adjustment

(3) If, before the ~~Financial Services Manager~~**Minister** has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The ~~Financial Services Manager~~**Minister** may amend the fair allocation calculation from time to time, as the ~~Financial Services Manager~~**Minister** considers appropriate, having regard to the requirements of this Act.

~~**Submission of fair allocation to Minister**~~

~~(5) The Financial Services Manager shall provide to the Minister the fair allocation calculation and any amendments to the fair allocation calculation.~~

Effective date

(~~6~~**5**) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the ~~Minister in writing.~~**Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. [NTD: There should be a tie in to section 7xx.]**

Publication

(~~7~~6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred ~~or potential transfers should be made~~ for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence~~, in each case after reducing the fair allocation calculation by the amount of any fair adjustment for the reference period~~. **[NTD: See note after 15xx(1.1)(2)]**.

2. Incurrences and transfers should be implemented in a manner that~~, as~~ the Financial Services Manager ~~considers to be reasonable, is cost effective and~~**determines reasonably** reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

~~[Note for reference: List of items for consideration in regulation: (a) anticipated IESO funding shortfalls and related transfer amounts; (b) the maturities of funding obligations; (c) the availability of refinancings, redemption opportunities and liquidity terms and conditions in order to achieve the objective contemplated in section X(1)(a); (d) the availability of currency and interest rate hedging facilities for the purpose of mitigating any differences between the expected finance amounts becoming due and payable during a reference period and the fair allocation amount for the reference period; (d) the amount and potential variability of interest rates and related financing costs; (e) available capital markets in which funding obligations may be incurred.]~~

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations ~~incurred~~**that** would ~~not~~ be payable during the reference period ~~in an amount that exceeds~~**would not exceed** the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(~~4~~**5**) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.*] **[NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

~~**<*Implementation of Financing Plan*>**~~

~~**17xx.** (1) The Financial Services Manager shall< *incur funding obligations and make transfers in material conformity with the applicable*> Financing Plan.~~

~~**Same**~~

~~(2) For greater certainty, section [paramountcy of funding obligations] applies despite the failure of the Financial Services Manager to comply with subsection (1).~~

Financing entities

17xx. (~~3~~**1**) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

>Implementation of Financing Plan<

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to> *incur funding obligations and make transfers in material conformity with the applicable*< **Financing Plan.**

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(~~3~~**4**) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, **Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity),** the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to ~~Fair Allocation~~Financing Plan

(~~4~~**5**) ~~No~~**Each** funding obligation incurred and ~~no~~**each** transfer made by ~~the Financial Services Manager shall be affected by any inconsistency with the Financing Plan, including any inconsistency with the principles set out in section X~~**a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount**.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.
[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order ~~to authorize the IESO to do the following~~**authorizing the IESO to [NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. ~~Create~~**establish** a variance account for the purposes of this Act~~.~~**;**

2. ~~Record~~**record** the IESO funding shortfall in the variance account from time to time~~.~~ **[NTD: monthly?]; and**

3. ~~Recover~~**recover** the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The **accounting** order of the Board **made under (1)** shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the **accounting** order of the Board **made under (1)**.

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts **that would be** issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other ~~restrictions~~**conditions** as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan~~, which transfer creates the investment asset~~.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) ~~unless otherwise provided for in this Act,~~ the IESO shall have no further right, title or interest in~~, or any~~ **the regulatory asset or in the related investment asset. [NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of~~, the regulatory asset or in~~ the investment asset will be primarily created by ~~the transfer~~ contract.]**

Same

(3) Upon transfer, the financing entity ~~becomes an investment asset owner and~~ acquires an investment interest **and becomes an investment interest owner**.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment ~~asset~~**interest** owner of the regulatory asset,

and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~without duplication~~**of investment interest owners**:

1. The right to impose, bill, invoice, collect ~~and~~, receive **and recover** the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive ~~and~~, collect **and recover** all amounts in respect of the clean energy adjustment that are imposed, billed ~~and~~, invoiced **and recoverable** under this Act, including any ~~amounts that~~**and** all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the ~~regulatory asset~~**investment interest** owner's ~~regulatory asset~~**investment interest**.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(~~2~~**3**) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment ~~asset~~**interest** owner or an owner of distribution system assets in the Province;

(b) in connection with any default~~, bankruptcy, reorganization or other insolvency proceeding~~ of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(~~3~~4) The rights of the investment ~~asset~~**interest** owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with ~~section [xx] of the *Personal Property Security Act*~~ **Part III of this Act. [NTD: PPSA has nothing to do with it.]**

Collective action required

(~~4~~5) If the investment ~~asset~~**interest** owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment ~~asset~~**interest** owner collectively and in coordination with all other investment ~~asset~~**interest** owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment ~~asset~~**interest** owner as a collective in accordance with its terms.

[Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment ~~asset~~**interest** owner may transfer all or a portion of its rights and interests in an investment interest to any other investment ~~asset~~**interest** owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment ~~asset~~**interest** owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected **(as such term is used in the *Personal Property Security Act*)**, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment ~~asset~~**interest** owner shall have priority over any liens in favour of such other persons**, other than those granted in accordance with section 28xx of the Act**.

Investment ~~asset~~interest owner may grant security interest

28xx. (1) An investment ~~asset~~**interest** owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under ~~the~~**an** investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment ~~asset~~**interest** owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any ~~[investment asset account] or other~~ account of any electricity vendor~~, the IESO~~, an agent of an electricity vendor~~ or the IESO~~ or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment ~~asset~~**interest** owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment ~~asset~~**interest** owner or secured party by any person or entity authorized to collect the clean energy adjustment, **including** defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any ~~bankruptcy, reorganization or other insolvency~~ proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the ~~establishment of the Fair Allocation Plan~~**calculation of the fair allocation amount or the fair adjustment**.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28~~7~~[76]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

~~7~~[76] Note - see s. 51 of the Electricity Act, 1998

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

~~38~~**39xx.** The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(~~a~~**c**) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment~~.~~**;**

(~~b~~**d**) governing the inclusion of ~~adjustments~~**information** under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in

activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, ~~2017, which activities may include,~~ **2017;***

(iv) incurring liabilities in relation to the regulatory asset**;**

(v) transferring the regulatory asset for consideration; **and**

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, ~~2017;~~ **2017.***

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under ~~that~~>*the Ontario Fair Hydro Plan*< *Act*>, *2017*< and engaging in activities to facilitate the implementation of ~~the *Ontario Fair Hydro Plan*~~**that** Act, ~~*2017,*~~ including ~~the following:~~ ~~1.~~ ~~Entering~~**entering** into contracts and undertakings on behalf of <~~*special purpose*~~>financing entities~~, including pre-formation contracts and undertakings and as principal in relation to matters permitted by <*the Ontario Fair Hydro Plan*> *Act*<, *2017*>~~ **and performing other services on behalf of financing entities,** subject to the right ~~of reimbursement from amounts available~~ to **be paid by** the financing ~~entity.~~**entities for those services.**[7]

~~2. Preparing reports on behalf of the financing entity.~~

~~3. Enforcing the rights of the financing entity.~~

[7] **NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.**

~~4. Signing offering documents as sponsor or otherwise on behalf of the financing entity.~~

~~5. Exercising the powers and performing the duties of the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*~~

~~6. Issuing non-equity securities in Ontario Power Generation Inc. or on if its subsidiaries, for the purpose of raising funds to acquire debt or equity interests in a financing entity whose activities are limited to the incurrence of funding obligations pursuant to the *Ontario Fair Hydro Plan Act, 2017*.~~

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create **or invest in** one or more subsidiaries, trusts**, partnerships** or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply ~~in~~**:**

1. In respect of ~~amounts payable to~~**any income, gain or profit of** Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of ~~its functions as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.~~**or by virtue of:**

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the ~~[TBD – language should link up with language from new Act.]~~***Ontario Fair Hydro Plan Act, 2017.***

205x. ~~Section 70 of the Act would be amended by adding the following subsection~~Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017.*

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017.*

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017.*

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any >*special purpose* <**financing entities established under and for the purposes of that Act.**

~~*[Note - still need to draft new subs. 70 (2.1)]*~~

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined **by the Financial Services Manager** by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment ~~asset~~**interest** owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the **investment asset** owners under a funding obligation, ~~excluding any payment made by applying the~~**reduced by any** proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, **original issue discount** scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received **or expected to be received** by or on behalf of investment ~~asset~~**interest** owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ~~2~~**ii** from the amount calculated under paragraph ~~1.~~**i.**

3. The sum of all amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve ~~at the end of~~**for** the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment ~~asset~~**interest** owners that were incurred or committed to

directly or indirectly in connection with the **acquisition, maintenance or collection of the investment asset or the** incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve ~~at the end of~~**for** the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment ~~asset~~**interest** owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment ~~asset~~**interest** owners during the reference period ~~from deposits previously made as described in paragraph 1.~~.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Document comparison by Workshare Compare on April-23-17 11:09:30 AM

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Split/Merged cell	
Padding cell	

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Moved to	16
Style change	0
Format changed	0
Total changes	566

Fair Hydro Plan Act (OPG_Torys_ Comments - April 23 2017) Consultation.pdf

Confidential – Solicitor & Client Privileged – Draft for Discussion Purposes Only

Version 3

Torys/OPG Comments – April 23, 2017

This confidential draft document is provided for discussion purposes only. It should not be construed as representing the position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

A proposal to create Legislation.

Ontario's Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL
TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

[Notes re this draft:
- all numbering of provisions may need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)
- need to check consistency of various phrases (e.g. *during/for/in respect of* reference period; *owner of RA/IA vs. RA/IA owner; etc.)*]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix. The Government is also committed to removing barriers to and promoting opportunities for renewable and clean energy projects.[1]

The Government of Ontario has established a regulatory framework related to the generation and sale of electricity, which has promoted and continues to promote significant investment to enable the phasing out of coal fired generation, the modernization of electricity generation facilities,[2] and conservation and demand management initiatives.

The Government of Ontario is committed to ensuring that the costs of these investments are allocated fairly among present and future generations of consumers, and that the costs of financing such fair allocation is similarly allocated among present and future generations of consumers. **[NTD: Delete references to "raising of money". This may imply a tax scheme. The references to generation facilities above is sufficient nexus to 92A(4)(b) of the Constitution 1867, if needed.]**

[1] Note: please see the preamble of the *Green Energy Act, 2009.*
[2] Note: please see clause 92A (4) (b) of the Constitution, 1867: "des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production meme".

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1xx. (1) In this Act,

"Board" means the Ontario Energy Board; ("French")

"clean energy adjustment" means the amount determined under section 10xx; ("French")
[Note - will need to check throughout the draft that references to CEA are clear as to whether it's the total CEA in respect of a reference period vs. the portion payable by a specified consumer.]

"clean energy benefits" means, in respect of a reference period, the value of the benefits to be derived by **[or accruing to]** specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected future incurrences of clean energy costs, as determined by ■ and described in ■; ("French")

"clean energy costs" means, in respect of a reference period, the costs allocated to specified consumers during the reference period as a result of the clean energy initiative, including as a result of past, present and expected costs incurred in respect of,

(a) the amounts to be reflected in adjustments made by the IESO under section 25.33 of the *Electricity Act, 1998* or any provision that is the successor to that provision, which relate to,

(i) contracts for renewable energy generation or capacity,

(ii) contracts for conservation and demand management, including storage,

(iii) energy efficiency **[NTD: Consider deleting. Section 25.33 does not refer to any such contracts, nor does s. 78.5 of the OEB Act. It is not clear what the basis is for this type of cost/GA adjustment]**,

(iv) contracts for natural gas generation or capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed,

(v) payments under section 78.5 of the *Ontario Energy Board Act, 1998*, and

(b) such other estimated costs as may be prescribed; ("French")

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in clean and renewable energy sources and technologies,

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies, and

(c) promoting conservation and demand management; ("French")

"electricity vendor"[3] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"fair adjustment" means the adjustment to the rate payable for electricity determined in accordance with Part II; ("French")

"fair allocation amount" has the meaning ascribed to it in section 15xx(1.1);

"Financial Services Manager" means Ontario Power Generation Inc. [or such other person or entity as may be appointed as the Financial Services Manager by the Minister under section ** for purposes of section 16xx or by holders of funding obligations in accordance with the terms of their applicable contract rights]; ("French")

"financing entity" means any entity established for the purpose of being an investment interest owner and that is managed by the Financial Services Manager;

"Financing Plan" means the plan prepared under section X, as amended from time to time in accordance with this Act; ("French")

[3] Note - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

"funding obligation" means a payment obligation incurred by or on behalf of an investment interest owner as prescribed in the Regulations; ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"IESO funding shortfall" means, in respect of a reference period, the amount determined under section 20xx for the reference period; ("French")

"investment asset" means the property rights created as described in section 22xx; ("French")

"investment interest owner" means a financing entity that acquires an investment interest in the investment asset; ("French")

"investment interest" means an ownership interest in the investment asset;

"invoice amount" means the amount, determined in accordance with subsections (2.1) and (2.2) and the regulations, that is payable by a specified consumer for the provision of electricity and related services **[NTD: to capture delivery and regulatory charges that together with commodity make up the total invoice amount]** in Ontario during a period of time specified on an invoice issued by an electricity vendor; ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means each of,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017, and **[NTD: See note after section 6xx(4)]**

(b) every six-month period following the period mentioned in clause (a) or such shorter period as may be set out in the Financing Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of an investment interest owner by applying the net proceeds obtained by the investment interest owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the right established under section X to recover the IESO funding shortfall; ("French")

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity and related services, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

(b) such other person as may be prescribed; ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French") **[NTD: Including successors?]**

"transfer" includes an assignment, conveyance, disposition or sale and, in the case of the regulatory asset or any part thereof, includes any act of IESO by which IESO purports to dispose of or forego its rights to recover all or any portion of the IESO funding shortfall to enable an investment interest owner to recover the amount of such IESO funding shortfall or portions thereof as part of its investment interest; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either

holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

Invoice amount

(2.1) Subject to subsection (2.2) and the regulations, the invoice amount for a specified consumer includes the following amounts:

1. In circumstances where the electricity is provided by a licensed distributor or a licensed retailer, the following:

    i. The commodity price of the electricity used during the invoice period.

    ii. The rates and charges set out in the applicable rate order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

    iii. Any adjustment on the invoice required under section 25.33 of the *Electricity Act, 1998*.

    iv. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); **[NTD: Confirm that the intention is for the total bill reduction to be based on the after-tax total amount of the bill]**

    v. Any other amounts as may be prescribed.

2. In circumstances where the electricity is provided by the IESO, such amounts as may be prescribed. ("French")

   [NTD: Need to deal with circumstances where invoice is issued by a licensed unit sub-meter provider]

Same, exclusions

(2.2) Except as otherwise prescribed by the regulations, the invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to electricity.

4. Any of the following charges that may be set out in an order issued by the Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

   i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

   ii. A charge labelled as a "specific service charge" or "retail service charge".

   iii. A rate rider. **[NTD: Consider the rationale of excluding rate riders, many of which are for costs that are directly related to the commodity price of electricity or rates and charges established under s. 78(3) of the OEB Act, all of which are more closely aligned with the types of items included in (2.1) rather than the items excluded under (2.2)]**

5. Any other prescribed amounts.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the *Ontario Energy Board Act, 1998*;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

Effect of invalidity, etc.[4]

2xx. (1) For greater certainty, all of the provisions of this Act remain in full force and effect, even if one or more provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same, funding obligation

(2) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect the validity or enforceability of a funding obligation incurred under this Act before the day that the provision is held to be invalid or ceases to be in effect.

Purpose

3xx. (1) The purposes of this Act are,[5]

(a) to fairly allocate clean energy costs among specified consumers over time and to reflect that fair allocation in the process by which these clean energy costs are funded; **[NTD: See comments above regarding references to raising money]** and **[NTD: Alternatively: ". . . over time and that the costs of financing such fair allocation are similarly allocated among specified consumers over time"]**

(b) to recognize that clean energy benefits that have accrued and that will accrue over time will continue to benefit present and future electricity consumers in the Province.

Crown bound

4xx. This Act binds the Crown.

[4] Note: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[5] Note: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.

Protection and assurances
Prohibition

5xx. (1) The Crown shall not do or cause or permit any agent of the Crown to do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection, remittance or recovery of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce, alter or impair the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset, investment interest or a funding obligation.

Clarification with respect to legislation and regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving or amending of a regulation under this Act, introducing or passing any amendments to this Act or any other Act, introducing or passing any new Act, or making or approving or amending a regulation under any other Act.

Agreements for compensation

(3) The Minister may, **[**with the approval of the Lieutenant Governor in Council,**]** enter into agreements on behalf of the Crown with any person in respect of this Act, or in relation to this Act, including agreements regarding financial commitments, financial arrangements, indemnities, guarantees or similar transactions. **[NTD: What are the implications of requiring LGIC approval?]**

IESO and Electricity vendors, obligations

(4) If the IESO or an electricity vendor fails to carry out its obligations under this Act or the regulations for any reason, including because the IESO or the electricity vendor is dissolved or restructured or because it becomes insolvent, the Crown shall carry out those obligations or ensure they are carried out by another appropriate entity.

PART II
FAIR ADJUSTMENT

Fair adjustment, May 1, 2017 to April 30, 2018
Definition

6xx. (1) In this section,

"average baseline invoice amount" means the average monthly invoice amount that would be payable by a representative consumer under the average baseline rate; ("French")

"average baseline rate" means the average rate that would be payable effective May 1, 2017 by the class of consumers prescribed by the regulations under the *Ontario Energy Board Act, 1998* for the purposes of subsection 79.16 (1) of that Act, as determined by the Board by applying the method prescribed by the regulations under clause 79.16 (1) (b) of that Act as of May 1, 2017; ("French")

"sub-meter customer" means a person who is supplied electricity by a specified consumer, if an invoice for the electricity is issued to the person by [the specified consumer, by an agent of the specified consumer or by] **[NTD: Consider deleting as these persons would not likely be permitted to provide sub-metering or to issue invoices other than based on sub-meters. Moreover, the language here would not even require them to have sub-meters]** a unit sub-meter provider providing unit sub-metering for the specified consumer; ("French")

"licensed unit sub-meter provider" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to engage in unit sub-metering;

Rate determination

(2) Subject to subsection (3), [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 is the average rate that would be payable by a representative consumer in order for the representative consumer to receive **[an average]** monthly invoice amount that is 25 per cent less than the average baseline invoice amount. **[NTD: We think this should indicate 17% rather than 25% on the assumption that the "average baseline rate" does not account for the 8% Ontario Rebate for Electricity Consumers. If it is intended to say 25% here, then the "average baseline rate" must already account for the 8% OREC but this is not indicated] [NTD: Consider whether this provision works with the May 1, 2017 'interim' or partial reduction announced by the OEB]**

Sub-meter customers

(3) A specified consumer who provides electricity to a sub-meter customer and any licensed unit sub-meter provider who provides unit sub-metering for the sub-meter customer on behalf of the specified consumer shall ensure that the rate payable by each sub-meter customer is the rate determined under subsection (2).

Determining rate

(4) The rate described in subsection (2) shall be,

(a) determined by the Board within seven business days after this section receives Royal Assent; and

(b) effective as of the first day of the calendar month immediately following the determination. **[NTD: If the legislation receives Royal Assent in May then the new rate would be applicable starting June 1, 2017.]**

Transition

(5) If, for technical or operational reasons, an electricity vendor, specified consumer or licensed unit sub-meter provider is unable to adapt its invoices to comply with this section by the time it issues its first invoice for electricity consumed on or after May 1, 2017,

(a) the electricity vendor, specified consumer or licensed unit sub-meter provider shall adapt its invoices as soon as possible and, in any event, no later than [August 1, 2017]; and

(b) the electricity vendor, specified consumer or licensed unit sub-meter provider shall ensure that any specified consumer or sub-meter customer invoiced at a rate higher than the rate described in subsection (2) receives the difference between the rate shown on their invoice and the applicable rate as a lump sum credit on the first invoice issued after the invoices have been adapted or by such other means as may be prescribed by the regulations.

Fair adjustment, May 1, 2018 to April 30, 2022

7xx. The Lieutenant Governor in Council may, [to more fairly measure and allocate the clean energy costs and clean energy benefits among present and future generations of specified consumers,] make regulations prescribing the rate for electricity payable by specified consumers and sub-meter customers during the period beginning on May 1, 2018 and ending on April 30, 2022. **[NTD: We believe you need to clarify whether or not Cabinet's authority to set rates under section 7xx is subject to the determination of the fair allocation amount in section 15xx.]**

PART III
CLEAN ENERGY ADJUSTMENT

Electricity vendor to invoice specified consumers

8xx. (1) Each electricity vendor shall issue an invoice to each of its specified consumers for the consumer's amount of the clean energy adjustment in accordance with the regulations. **[NTD: Need parallel requirements for sub-meter consumers to pay to licensed unit sub-meter providers and for the latter to pay electricity vendors on behalf of the relevant specified consumer]**

Electricity vendor to collect

(2) Each electricity vendor shall, as an agent of the IESO and the investment interest owners, collect amounts in respect of the clean energy adjustment from specified consumers [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Specified consumers to pay clean energy adjustment

(3) Upon receipt of an invoice that includes an amount in respect of a clean energy adjustment, a specified consumer shall pay such amount to the electricity vendor, as agent of IESO and the investment interest owners, in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

Same

(4) For greater certainty,

(a) each clean energy adjustment is considered to be consistent with the fair allocation calculation applicable at the time when the payment is due; and

(b) each clean energy adjustment is considered to relate to funding obligations that were incurred in a manner that was inconsistent with the Financing Plan.

Indebtedness of specified consumer

(5) An unpaid amount in respect of a clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the specified consumer to each investment interest owner in respect of each investment interest owner's respective interest in the investment asset.

Same

(6) The indebtedness mentioned in subsection (5) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise.

Determination of clean energy adjustment

10xx. (1) The clean energy adjustment payable by all specified consumers in respect of a reference period shall be determined **[NTD: by whom?]** as follows:

1. Calculate the estimated finance amount for the reference period in accordance with Schedule 1 and such additional rules as may be prescribed. **[NTD: Consider defining "estimated finance amount"]**

2. Add the true up amount for the reference period, as determined in accordance with the prescribed method, to the estimated finance amount calculated under paragraph 1. **[NTD: Consider defining "true up amount"]**

True up amount

(2) For the purposes of paragraph 2 of subsection (1), the Lieutenant Governor in Council may make regulations prescribing the method for determining the true up amount, having regard to the following principles:

1. The true up amount should serve to ensure that the collection of the clean energy adjustment is sufficient to pay the estimated finance amount when it is due.

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

    i. differences between amounts billed and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

    ii. variations in billings due to variations in electricity consumption. **[NTD: Confirm that true up will cover forecasting errors in addition to the rate reduction.]** **[NTD: But excluding variations attributable to the current RPP methodology or due to OREC]**

IESO to issue remittance notice to electricity vendors

11xx. (1) The IESO shall, in accordance with the regulations, issue a remittance notice to each electricity vendor for the electricity vendor's portion, as determined in accordance with the regulations, of the clean energy adjustment in respect of a reference period. **[NTD: This process needs to be re-considered. Under the OEB Act, electricity vendors may only charge their consumers the amounts that the OEB permits them to charge. IESO cannot tell EVs what to charge and EVs cannot determine on their own what to charge based on amounts invoiced by IESO. Moreover, it would be too much of a burden on EVs, and too much risk of error, to require them to determine charges for their consumers based on the overall portion of the CEA allocated to that EV. It is suggested that the alternative is a process whereby the OEB determines a rate that is applicable to all specified consumers. The rate would be based on information from IESO (i.e. forecast demand for all specified consumers in a reference period) and information from the Financial Services Manager (i.e. the estimated financing cost/total amount it needs in the reference period), which information the OEB would be required to accept in determining the applicable rate, which EVs would then be required to charge and remit to IESO]**

IESO to collect

(2) The IESO shall, as an agent of the investment interest owners, collect the clean energy adjustment from electricity vendors [in accordance with the monthly settlement process set out in the market rules made under section 32 of the *Electricity Act, 1998]*.

Collection account

(3) All of the following amounts received by the IESO shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be deposited promptly into an account established for the purposes of collecting those amounts:

1. Amounts described in subsection 11xx (2).

2. Payments made by specified consumers directly to the IESO as electricity vendor under subsection 8 (1).

Same, held in trust

(4) All amounts received by the IESO in respect of the clean energy adjustment shall, until paid to or for the benefit of the investment interest owners in accordance with subsection (5), be held, and are deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act.

IESO to remit

(5) The IESO shall remit amounts received by it in respect of the clean energy adjustment to or for the benefit of the investment interest owners in accordance with the regulations.

Collection of outstanding amounts

(6) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable fair allocation calculation made by the Financial Services Manager under Part IV, the IESO may collect any outstanding IESO funding shortfall from specified consumers. **[NTD: Does the methodology for doing so need to be further described in regulations?]**

Irrevocability of clean energy adjustment

12xx. (1) The amount in respect of the clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of the consumer's indebtedness created by the clean energy adjustment is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is a calculation error by the electricity vendor, which error shall be corrected in accordance with section 10xx(2).

Pro rating of payments

(3) If an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices and the amount paid is less than the total amount payable, the electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices in respect of electricity charges for the same invoice period.

Held in trust

(4) All of the following amounts received by an electricity vendor shall, until paid to or for the benefit of the investment interest owner in accordance with subsection (5), be held, and shall be deemed to be held, in trust for the investment interest owners or a secured party to whom a security interest in an investment interest is granted under this Act:

1. Payments received from or on behalf of specified consumers under subsection 8 (1).

2. Portions of payments received from or on behalf of specified consumers under subsection 8 (1) that are allocated to the clean energy adjustment under subsection (3).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Remittance to IESO

(5) Each electricity vendor other than the IESO shall remit amounts described in subsection (4) to the IESO for the benefit of the investment interest owners or secured parties in accordance with the regulations.

Regulations

(6) If an electricity vendor fails, in the manner described in the regulations, to comply with the requirements of this section, the electricity vendor shall take such steps as the regulations may prescribe.

[NTD: Need parallel requirements for licensed unit sub-meter providers to invoice and collect from sub-meter customers and allocate on a pro-rata basis, hold amounts in trust and remit to EVs on behalf of the relevant specified consumers]

PART IV
IMPLEMENTATION

FINANCIAL SERVICES MANAGER

Appointment

13xx. (1) [Note: To be elaborated.] **[NTD: Limit appointment to the FSM's role under section 16xx of the Act only]**

Termination

(2) The Minister may by written order terminate the appointment of an appointee as the Financial Services Manager for purposes of section 16xx of the Act if,

(a) the Minister has advised the appointee that the Financing Plan is either inconsistent with or is being implemented in a manner that is inconsistent with the principles set out in section x;

(b) the appointee has been afforded a reasonable opportunity to consider and address the inconsistency; and

(c) the appointee is unwilling or unable to address the inconsistency to the satisfaction of the Minister.

Replacement

(3) Upon terminating an appointment, the Minister may, in accordance with the regulations, appoint a new person or entity as the Financial Services Manager for purposes of section 16xx of the Act.

Duties and powers

14xx. (1) The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners.

Same

(2) The administration of the investment asset may include the following:

1. Providing information, in accordance with the regulations, to the Board in respect of funding obligations and the determination of the clean energy adjustment in accordance with section XX.

2. Providing information to the IESO for distribution to electricity vendors, in respect of obligations under Part III.

3. Such other matters as may be prescribed. **[NTD: What is contemplated here?]**

Review of costs

(3) The Board shall review the administrative costs of the Financial Services Manager in accordance with the regulations. **[NTD: Please confirm that fees to be paid to OPG will be address in the regulations.] [NTD: Need to understand intended scope and nature of OEB review to determine if this language is appropriate].**

FAIR ALLOCATION AMOUNT

Minister to calculate fair allocation amount

15xx. (1) The Minister shall calculate the fair allocation amount for the purposes of,

(a) fairly measuring and allocating the estimated clean energy costs and estimated clean energy benefits among the specified consumers in respect of each reference period; and

(b) aligning funding obligations that may be incurred during each reference period with the allocation of the estimated clean energy costs and estimated clean energy benefits across present and future generations of specified consumers.

Amount

(1.1) The fair allocation amount in respect of a reference period is the sum of the following amounts:

1. The amount, if any, by which the estimated [clean energy costs] [clean energy benefits] to be allocated to specified consumers in respect of the reference period exceeds the estimated amount of [the global adjustment] that would be borne by the specified consumers in respect of clean energy costs [in the absence of this Act].

2. An allocable portion of the value of any fair adjustment, determined in accordance with subsection (3). **[NTD: Item 1 is a $ amount. Item 2 is a rate reduction measured in $Mwh]]**

Principles

(2) In calculating the fair allocation amount [or in developing the fair allocation calculation?], subject to subsection (3), the Minister shall have regard to the following principles:

1. Clean energy costs allocated to the specified consumers in respect of a reference period should be allocated in proportion to the clean energy benefits attributed to the specified consumers in respect of the reference period.

2. The clean energy benefits attributed to the specified consumers in respect of a reference period should be determined based on *[Insert principles]*.

3. The fair allocation calculation should include reasonable assumptions regarding the following:

    i. The funding costs associated with the funding obligations, for the purpose of equating nominal amounts over time.

    ii. The expected number of specified consumers for each reference period.

    iii. The expected volumes of electricity consumption for each reference period.

Allocation of fair adjustment

(3) If, before the Minister has calculated the fair allocation amount in respect of a reference period, a fair adjustment has been made under Part II in respect of the reference period, the calculation shall include a portion of the value of the fair adjustment in the fair allocation calculation for each future reference period. **[NTD: If the intention is that the fair adjustment under Part II includes the $1B deferral announced by the OEB commencing May 1, 2017, this may not satisfy s. 6xx(2). Also, see Note after 15xx(1.1)(2)]]**

Amendments to the fair allocation calculation

(4) The Minister may amend the fair allocation calculation from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

Effective date

(5) The fair allocation calculation or an amendment to the fair allocation calculation takes effect on the day that is 30 days after the fair allocation calculation or the amendment, as the case may be, is provided to the Lieutenant Governor in Council, or such shorter period as the Lieutenant Governor in Council may approve. **[NTD: There should be a tie in to section 7xx.]**

Publication

(6) The Minister shall ensure that the fair allocation calculation and any amendments to it are made available to the public in a manner that the Minister considers appropriate.

FINANCING PLAN

Financial Services Manager to prepare Financing Plan

16xx. (1) The Financial Services Manager shall prepare and provide to the Minister a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of this Act.

Principles

(2) In preparing the Financing Plan, the Financial Services Manager shall have regard to the following principles:

1. Any incurrence of a funding obligation should reasonably align the expected finance amount determined under Schedule 1 that would become due and payable during a reference period with the fair allocation amount determined for the reference period under this Part as of the time of the incurrence. **[NTD: See note after 15xx(1.1)(2)].**

2. Incurrences and transfers should be implemented in a manner that the Financial Services Manager determines reasonably reflects prevailing market terms and conditions.

3. Reasonable assumptions should be made regarding such matters as may be prescribed.

Amendments to approved plan

(3) The Financial Services Manager may amend the Financing Plan at any time, without the approval of the Minister, subject to the requirements set out in this section. **[NTD: How would amendment be communicated? See section 16xx(5).]**

Limitation, first five year period

(4) In respect of each reference period from May 1, 2017 to April 30, 2022, no funding obligation shall be incurred that would become payable during the reference period and result in a clean energy adjustment for the reference period unless,

(a) no fair adjustment has been made under Part II in respect of the reference period; or

(b) if a fair adjustment has been made under Part II in respect of the reference period, the funding obligations that would be payable during the reference period would not exceed the [difference between the fair allocation amount for the reference period and the amount of the fair adjustment for the reference

period]. **[NTD: Has anyone modelled this out to ensure that it is not too restrictive?]**

Confidentiality of plan

[(5) The Financing Plan is deemed to be a record subject to section 17 of the *Freedom of Information and Protection of Privacy Act.***] [NTD: We believe that the Financing Plan would be a material fact to investors (and rating agencies) and would have to be disclosed.]**

Financing entities

17xx. (1) In accordance with the Financing Plan, the Financial Services Manager may establish one or more financing entities that may incur funding obligations and make transfers.

Implementation of Financing Plan

(2) The Financial Services Manager shall in good faith make reasonable efforts to cause financing entities to incur funding obligations and make transfers in material conformity with the applicable Financing Plan.

Same

(3) Any funding obligation incurred by the Financial Services Manager on behalf of a financing entity is considered to be incurred in conformance with the applicable Financing Plan.

Prohibition

(4) The Financial Services Manager shall not provide for funding obligations to be incurred with any recourse to any assets of an electricity vendor, Ontario Power Generation Inc., any subsidiary of Ontario Power Generation Inc. (other than a financing entity), the Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

Effect of amendment to Financing Plan

(5) Each funding obligation incurred and each transfer made by a financing entity shall be considered to be, on occurrence or on transfer, consistent with the Financing Plan and consistent with each fair allocation amount.

PART V
THE REGULATORY ASSET

Interpretation, portion of regulatory asset

18xx. If a transfer under this Part provides for the transfer of a portion of the regulatory asset, any references in this Part to the regulatory asset are deemed to be references to the portion of the regulatory asset transferred.

[Note: This is meant to assist with clarity in the subsequent provisions.]

Variance account

19xx. (1) The Board shall issue an accounting order authorizing the IESO to **[NTD: Consider if any value in having the OEB do this. If OEB derives all of its powers from the legislature, then why can't legislature just directly authorize the IES to establish the account in the legislation?]**:

1. establish a variance account for the purposes of this Act;

2. record the IESO funding shortfall in the variance account from time to time **[NTD: monthly?]**; and

3. recover the IESO funding shortfall in accordance with section X and the regulations.

No hearing

(2) The accounting order of the Board made under (1) shall be made in writing and without holding a hearing. **[NTD: Timing?]**

No appeals, etc.

(3) No appeal lies from the accounting order of the Board made under (1).

IESO funding shortfall

20xx. (1) The IESO shall determine the IESO funding shortfall for each month in the following manner:

1. Calculate the sum of all invoice amounts that would be issued to specified consumers for the month if Part II of this Act did not apply. **[NTD: This requires IESO to determine what the RPP rate would have been but for this Act. Can IESO do this calculation?] [NTD: See also the NTD at 11xx]**

2. Calculate the sum of all invoice amounts issued to specified consumers for the month.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1, and make any other adjustments as may be prescribed.

Same

(2) To the extent that the IESO funding shortfall for any month is based on an estimate of the electricity used by specified consumers, the IESO shall record an adjustment in the variance account in the following month to reflect the difference between the estimate and the electricity actually used by specified consumers.

Recording of IESO funding shortfall

(3) IESO shall record the IESO funding shortfall from time to time **[NTD: monthly?]**, including adjustments resulting from the exercise of the right of recovery under section 21 and any transfer under section 22, in the variance account.

Recording determinative

(4) A recording of the IESO funding shortfall in the variance account is determinative of the amount of IESO funding shortfall at the time of the recording.

Regulatory asset established

21xx. (1) The IESO has the right, exercisable in accordance with this Act and the regulations, to recover the IESO funding shortfall.

Same, restrictions

(2) The IESO's right to recover the IESO funding shortfall under subsection (1) is subject to the following:

1. The IESO shall not be entitled to collect the IESO funding shortfall from specified consumers before May 1, 2022. **[NTD: Accountants to confirm that this will not preclude treatment as a regulatory asset for accounting purposes.]**

2. The process by which the IESO may recover the IESO funding shortfall shall be established by the Board, having regard to the amount of the IESO funding shortfall from time to time and the [fair allocation calculation].

3. Such other conditions as may be prescribed.

Transfer of regulatory asset

22xx. (1) The IESO may transfer all or a portion of the regulatory asset to any financing entity under the Financing Plan.

Same

(2) Upon receipt of any payment in consideration for the transfer,

(a) the IESO shall record the payment as a reduction of the IESO funding shortfall in the variance account; and

(b) the IESO shall have no further right, title or interest in the regulatory asset or in the related investment asset. **[NTD: Need for certainty on this point should prevail. The obligations of IESO in respect of the investment asset will be primarily created by contract.]**

Same

(3) Upon transfer, the financing entity acquires an investment interest and becomes an investment interest owner.

Validity of transfer

23xx. (1) A transfer of a regulatory asset under this Act is a valid and enforceable sale and absolute transfer to the investment interest owner of the regulatory asset, and the investment asset created by the transfer shall be immediately vested in the transferee.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall, and not merely as a security interest, and upon the absolute transfer the transferor shall retain no right, title or interest in the regulatory asset, including all rights to recover the IESO funding shortfall.

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

PART VI
THE INVESTMENT ASSET

Interpretation, investment asset

24xx. If a transfer under this Part provides for the transfer of an investment asset, any references in this Part to the investment interest are deemed to be references to the specific investment interest transferred.

Investment asset established

25xx. (1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right to impose, bill, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover all amounts in respect of the clean energy adjustment that are imposed, billed, invoiced and recoverable under this Act, including any and all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the investment interest owner's investment interest.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(2) An investment interest is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(3) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, an agent of the investment interest owner or an owner of distribution system assets in the Province;

(b) in connection with any default of a person mentioned in clause (a); or

(c) by any affiliate or successor of a person mentioned in clause (a).

Exercise of rights

(4) The rights of the investment interest owner to collect and enforce its rights and interests in, to and in respect of the investment asset against a specified consumer shall be exercised in accordance with Part III of this Act. **[NTD: PPSA has nothing to do with it.]**

Collective action required

(5) If the investment interest owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment interest owner collectively and in coordination with all other investment interest owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment interest owner as a collective in accordance with its terms. [Note: Successors may need to be addressed here.] **[NTD: Successors can be addressed in the agreement.]**

Transfer of investment interest

26xx. An investment interest owner may transfer all or a portion of its rights and interests in an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Validity of transfer

27xx. (1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the owner of the investment interest acquired a valid property right and interest in, to and under the applicable investment interest in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an

investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest, subject to the transfer, including all rights to the investment interest arising after the transfer.

Deemed perfection, etc.

(3) At the time a transfer of an investment interest is made, the transfer shall be deemed to have been and shall be perfected (as such term is used in the *Personal Property Security Act*), vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the investment interest owner shall have priority over any liens in favour of such other persons, other than those granted in accordance with section 28xx of the Act.

Investment interest owner may grant security interest

28xx. (1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under an investment interest to or in favour of any person to secure a funding obligation.

Validity

(2) A security interest granted under this Act shall be valid and enforceable in accordance with its terms.

Perfection and priority of security interests

(3) All provisions of the *Personal Property Security Act* shall apply to the investment asset and each investment interest on the basis that it is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by the owner of an investment interest to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Proceeds

(4) All proceeds of an investment interest that are subject to the security interest and that are received by the applicable investment interest owner shall immediately be subject to the security interest and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(5) The security interest shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may

subsequently attach to the property rights and interests in the investment interest subject to the security interest, subject to the written consent of the person to whom the security interest has been granted.

Same

(6) The person to whom the security interest has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any account of any electricity vendor, an agent of an electricity vendor or other person who may have commingled such revenues or other proceeds with other funds.

PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

29xx. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection. **[NTD: Consider whether this should be subject to OEB power to replace a licensee under s. 59 of the OEB Act]**

Not Crown agent

30xx. For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

31xx. (1) A court in the Province may, upon application by an investment interest owner or a secured party, order the sequestration and payment of the clean energy adjustment, collections and remittances, as applicable, for the benefit of the investment interest owner or secured party by any person or entity authorized to collect the clean energy adjustment, including defaults on any required remittance of the clean energy adjustment, collections or remittances.

Same

(2) An order under subsection (1) does not limit any other remedies available to the applicant.

Same

(3) An order under subsection (1) shall remain in full force and effect despite any proceedings with respect to the person or entity who is subject to the order.

Choice of law

32xx. The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or

right or creation of a security interest in the regulatory asset, the investment asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

33xx. The provisions of this Act and the regulations apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or security interest.

No further approvals, etc.

34xx. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the calculation of the fair allocation amount or the fair adjustment.

Immunity

35xx. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

36xx. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied. **[NTD: Does this belong in section 5xx? Please note that offering documents will have to refer to support from the Province.]**

Non-application, Financial Administration Act, s. 28[6]

37xx. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

[6] Note - see s. 51 of the Electricity Act, 1998

Standing and Remedies

38xx. (a) Any investment interest owner, any creditor of an investment interest owner and any Financial Services Manager may apply to a court for an order under this section.

(b) Where upon an application under subsection (a), the court is satisfied that the IESO, any electricity vendor or any other Person has not complied with, or is not complying with, this Act or the regulations to this Act, the court may make an order to rectify the matters complained of.

(c) In connection with an application under this section, the court may make any interim or final order it thinks fit, including an order restraining the conduct complained of and an order to compensate an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager.

(d) The rights of an investment interest owner, any creditor of an investment interest owner and any Financial Services Manager under this section are in addition to any other rights any of them may have.

(e) In this section, court means the Superior Court of Justice.

(f) An appeal lies to the ■ from any order made by the court under this section.

[NTD: This language is based on language in the OBCA]

Regulations

39xx. The Lieutenant Governor in Council may make regulations,

(a) defining any term used in this Act….

(b) prescribing types of payment obligations that constitute funding obligations;

(c) governing the calculation [true-up amount] and how the amount is to be applied to the clean energy adjustment;

(d) governing the inclusion of information under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments. **[NTD: The Province should not have the right to change how the FSM will ultimately collect the investment interests.]**

[Note: reg-making powers to be dealt with in subsequent draft]

PART VII
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.0.1) to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including,

(i) entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*;

(ii) engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and to engage in related settlement activities;

(iii) engaging in activities related to the creation, transfer and administration of the regulatory asset created under the *Ontario Fair Hydro Plan Act, 2017;*

(iv) incurring liabilities in relation to the regulatory asset;

(v) transferring the regulatory asset for consideration; and

(vi) acting as a recovery agent under the *Ontario Fair Hydro Plan Act, 2017*.

201x. Section 53.1 of the Act would be amended by adding the following subsections:

Same, *Ontario Fair Hydro Plan Act, 2017*

53.1 (1.1) In addition to the objects mentioned in subsection (1), the objects of Ontario Power Generation Inc. include exercising the powers and rights and performing the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services

on behalf of financing entities, subject to the right to be paid by the financing entities for those services.[7]

Subsidiaries, etc.

(1.2) Ontario Power Generation Inc. may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects.

Deemed assets, entity

(1.3) Subject to subsection (1.4) and despite any other provision of this Act, the *Business Corporations Act* or any other Acts or laws,

(a) the assets and liabilities of a financing entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries in any proceeding or otherwise; and

(b) the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries shall not form part of the assets and liabilities of a financing entity in any proceeding or otherwise.

Exception

(1.4) Subsection (1.3) does not apply to a subsidiary of Ontario Power Generation Inc. where the subsidiary is a financing entity.

Definition, financing entity

(1.5) For the purposes of this section, "financing entity" has the meanings provided for in the *Fair Hydro Plan Act, 2017*.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any

[7] NTD: Upon further reflection, OPG/Torys think it would be preferable to not have a detailed list of objects included in s. 53.1(1.1) as it may raise issues about OPG's objects set out in s. 53.1(1) and the absence of a detailed list of objects in that section.

dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply:

1. In respect of any income, gain or profit of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of or by virtue of:

(A) where a financing entity established is a corporation, acquiring, holding or disposing of any equity interest in the financing entity, including in respect of any dividends or other distributions paid or payable or otherwise accrued to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. in respect of any such equity, or

(B) where a financing entity is a trust, acquiring, holding or disposing of any beneficial interest in the financing entity, including in respect of any amounts paid or payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a beneficiary of such entity, or

2. To a financing entity that is a subsidiary of Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc.

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*.

205x. Subsection 70(2.1) of the Act would be amended by adding the following paragraph:

4. The licensee is required to comply with the *Ontario Fair Hydro Plan Act, 2017*.

206x. Section 78.1 of the Act would be amended by adding the following subsection:

Same, limitation re Ontario Power Generation Inc.

(3) The determination of a payment to Ontario Power Generation Inc. under this section shall not include any consideration of amounts related to activities of Ontario Power Generation Inc. carried out in relation to the *Ontario Fair Hydro Plan Act, 2017*.

Same

(3.1) The amounts referred to in subsection (3) include, without limitation, the following:

1. Amounts related to the appointment of Ontario Power Generation Inc. as the Financial Services Manager under the *Ontario Fair Hydro Plan Act, 2017*.

2. Amounts related to the charging of fees for performing duties as the Financial Services Manager.

3. Amounts related to exercising the powers and performing the duties of the Financial Services Manager.

4. Amounts related to the consolidation of the assets and liabilities for accounting purposes of any special purpose financing entities established under and for the purposes of that Act.

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

SCHEDULE 1
ESTIMATED FINANCE AMOUNT

Estimated finance amount

1. The estimated finance amount for a reference period shall be determined by the Financial Services Manager by estimating, prior to the start of a reference period, the sum of the following:

1. The sum of all amounts that are payable during the reference period by or on behalf of the investment interest owners to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the investment asset owners under a funding obligation, reduced by any proceeds of a refinancing.

2. The sum of all funding costs for the reference period, determined as follows:

    i. Calculate the aggregate of all interest, original issue discount scheduled principal and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of investment assets owners during the reference period in respect of all funding obligations, including such amounts as may be prescribed.

    ii. Calculate the sum of the aggregate of all amounts received or expected to be received by or on behalf of investment interest owners during the reference period in respect of all funding obligations and such other amounts as may be prescribed.

    iii. Subtract the amount calculated under paragraph ii from the amount calculated under paragraph i.

3. The sum of all amounts payable during the reference period by or on behalf of investment interest owners to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

4. The balance of the finance reserve for the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable during the reference period by or on behalf of investment interest owners that were incurred or committed to directly or indirectly in connection with the acquisition, maintenance or collection of the investment asset or the incurrence of funding obligations

under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps: **[NTD: Who is to complete this?]**

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve for the reference period is determined by taking the following steps:

1. Calculate the sum of all amounts deposited by or on behalf of investment interest owners during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn by or on behalf of investment interest owners during the reference period.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

RE_ OPG -IFRS Analysisto MP.pptx.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: OPG -IFRS Analysisto MP.pptx
Date: Monday, May 04, 2015 08:31:20

Hi Nadine,

I am free from 11am.

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, May 01, 2015 4:17 PM
To: Picard, Michel
Cc: Patel, Bharat (TBS); Virani, Shyrose (TBS)
Subject: OPG -IFRS Analysisto MP.pptx

Hi Michel.

Can you please review the attached draft deck that Bharat and I compiled based on our recent discussion with OPG. We thought that this deck might be a good focus of discussion for this Wednesday's discussion.

Please advise of your availability for a call on Monday morning to discuss.

Also, with regards to the PAC work, can you please send a copy of your firm's research on voting patterns that supported your control analysis. We would like to make reference to the research in our upcoming discussions with the AG.

Thanks so much and have a great weekend.

Nadine

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RE_ Phone call tomorrow _ Legislative drafting (Feb 28th at 2 pm).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Waddell, Colleen (ENERGY) [Colleen.Waddell@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Kim.Marshall@ieso.ca' [Kim.Marshall@ieso.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: Phone call tomorrow | Legislative drafting (Feb 28th at 2 pm)
Date: Monday, February 27, 2017 16:08:49

OK for me

From: Waddell, Colleen (ENERGY) [mailto:Colleen.Waddell@ontario.ca]
Sent: Monday, February 27, 2017 2:57 PM
To: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Picard, Michel <mpicard@kpmg.ca>; 'Kim.Marshall@ieso.ca' <Kim.Marshall@ieso.ca>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Rehob, James (ENERGY) <James.Rehob@ontario.ca>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: RE: Phone call tomorrow | Legislative drafting (Feb 28th at 2 pm)

Hello Everyone,

The phone will have to start at 230 pm – please let me know if this time works.

I will put a hold in your calendars.

CW

From: Waddell, Colleen (ENERGY)
Sent: February 27, 2017 2:28 PM
To: Petsche, Nadine (TBS); 'mpicard@kpmg.ca'; 'Kim.Marshall@ieso.ca'; Shear, Dan (ENERGY); Rehob, James (ENERGY)
Cc: Veinot, Cindy (TBS); Hosick, Sarah (TBS)
Subject: Phone call tomorrow | Legislative drafting (Feb 28th at 2 pm)

Hello Everyone,

Scott has asked that we find time for a phone call tomorrow re: Legislative drafting.

Can you please let me know if you can make 2 pm to 3 pm work for the call.

Thank you

Colleen Waddell | Executive Assistant

Electricity Investment and Governance Secretariat

Ministry of Finance

7th Floor | 375 University Ave| Toronto, ON| M5G 2J5

W: 416-326-5526

colleen.waddell@ontario.ca

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RE_ Please confirm.rtf

From: Betik, Matthew [mbetik@kpmg.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]; Picard, Michel [mpicard@kpmg.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Please confirm
Date: Friday, May 26, 2017 07:10:34

I see no errors in this information. I can't speak to the timing of communication between Kim and Bonnie/Bill because I simply don't know those dates.

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 25, 2017 5:09 PM
To: Susan Nicholson <susan.nicholson@ieso.ca>; Picard, Michel <mpicard@kpmg.ca>; Betik, Matthew <mbetik@kpmg.ca>
Cc: Nadine.Petsche@ontario.ca
Subject: RE: Please confirm

Here are some dates to add….

Approx. March Fri the 24th or Mon the 27th - I contact Bonnie's ofc and leave a vm

Thurs March 30th - Bill Pelow reaches out to Matt to review

Tues April 4th – Kim leaves vm for Bill Pelow

Friday april 7th – Bill Pelow returns my call

April 20 – Bill Pelow emails asking for meeting with IESO and KPMG

April 24 – IESO and KPMG meetings with auditor general office

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Susan Nicholson
Sent: May 25, 2017 4:10 PM
To: Kim Marshall; mpicard@kpmg.ca; mbetik@kpmg.ca
Cc: Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FW: Please confirm

As discussed, Kim will add some other key dates.

Thanks. Susan

From: Susan Nicholson
Sent: May 09, 2017 9:59 AM
To: Nadine.Petsche@ontario.ca
Cc: Kim Marshall; Susan Nicholson
Subject: FW: Please confirm

Nadine - timing of the events surrounding the approval of the audited IESO financial statements was as follows:

· February 28 – in accordance with the audit committee calendar, KPMG and management presented financial statements prior to accounting policy changes to the Audit Committee for information purposes. Management and KPMG discussed the proposed accounting policy changes with the objective of bringing policies and revised

financial statements back to the Audit Committee in March.

· March 1 – the Board delegated authority to the Audit Committee to review the accounting policy changes, adjust financial statements for the changes and approve on behalf of the Board

· March 15 – KPMG and management presented the accounting policy changes for rate regulated assets and market accounts to the Audit Committee at a special meeting. The presentation of materials included a memo from KPMG on the accounting policies as well as pro forma financial statements and proposed changes to the notes of the financial statements

· March 22 – KPMG and management presented the audited financial statements to the Audits Committee for approval based on the delegated authority of Board from March 1st. The financial statements were approved on March 22nd.

Nadine, happy to have a discussion

Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5

T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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Begin forwarded message:

From: "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
Date: May 8, 2017 at 5:08:55 PM EDT
To: "Kim Marshall (Kim.Marshall@ieso.ca)" <Kim.Marshall@ieso.ca>
Subject: Please confirm

Hi Kim.

Cindy has asked that I follow up regarding a comment made by the AG in a meeting last week. With regards to the IESO's recent decision to adopt rate regulated accounting, the AG said that a set of IESO f/s had presented to the IESO Board on March 21st which did not reflect rate regulated accounting even though IESO management and the external auditors would have known about the impending accounting and the anticipated adoption of rate regulated accounting to follow shortly thereafter.

Can you please confirm the accuracy of the AG's statement.

Thanks in advance.

Nadine

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ please see attached Triton invoice.rtf

From: Virani, Shyrose (TBS) []
To: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
Subject: RE: please see attached Triton invoice
Date: Monday, February 06, 2017 11:33:05

Yes, Triton told me that they just sent an email to Claire and I have to send Trevor's info again.

-----Original Message-----
From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: February 6, 2017 10:30 AM
To: Virani, Shyrose (TBS)
Cc: Colley, Matthew (CA - Toronto)
Subject: RE: please see attached Triton invoice

Thank you. Were you waiting for others?

Kerry

--
Kerry Danyluk
Partner | National Accounting and Assurance
D: +1 (416) 775 7183
kdanyluk@deloitte.ca | deloitte.ca
--
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Please consider the environment before printing.

-----Original Message-----
From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, February 6, 2017 7:23 AM
To: Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Cc: Colley, Matthew (CA - Toronto) <mcolley@deloitte.ca>
Subject: RE: please see attached Triton invoice

Hi Kerry

I just received your clearance and have shared the results with Cara W.

Thanks
Shyrose

-----Original Message-----
From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: February 6, 2017 10:20 AM
To: Virani, Shyrose (TBS)
Cc: Colley, Matthew (CA - Toronto)
Subject: RE: please see attached Triton invoice

Hi, Shyrose. Do you have any update on this? Are you still waiting for anything from us regarding the security clearances? Please let me know so I can follow up at our end. Thank you.

Kerry

--
Kerry Danyluk
Partner | National Accounting and Assurance
D: +1 (416) 775 7183
kdanyluk@deloitte.ca | deloitte.ca
--
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-----Original Message-----
From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Tuesday, January 31, 2017 2:14 PM
To: Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Subject: Re: please see attached Triton invoice

Yes I was. I will follow up with Triton again tomorrow

From: Danyluk, Kerry (CA - Toronto)
Sent: Tuesday, January 31, 2017 3:15 PM
To: Virani, Shyrose (TBS)
Cc: Grindley, Clair (CA - Toronto); Gary, Trevor (CA - Toronto)
Subject: RE: please see attached Triton invoice

Hi, Shyrose. I have now completed the security request through Triton. However, neither Clair Grindley nor Trevor Gary have heard from Triton yet. They are copied on this message. I think you were looking for clearances for them as well?

--
Kerry Danyluk
Partner | National Accounting and Assurance
D: +1 (416) 775 7183
kdanyluk@deloitte.ca | deloitte.ca<http://www.deloitte.ca/>
--
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Please consider the environment before printing.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, January 30, 2017 11:47 AM
To: Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Subject: RE: please see attached Triton invoice

Hi Kerry

I just spoke to Triton and they told me that your form was incomplete, therefore you have to fill up the form again, however, you can always skip the pay part since you have already made the payment, kindly follow the link they have provided.

Thanks
shyrose

From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: January 30, 2017 2:30 PM
To: Virani, Shyrose (TBS)

Subject: please see attached Triton invoice

Based on this, my security request was completed in November.

Regards,
Kerry

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RE_ please see attached Triton invoice.rtf

From: Virani, Shyrose (TBS) []
To: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
CC: Colley, Matthew (CA - Toronto) [mcolley@deloitte.ca]
Subject: RE: please see attached Triton invoice
Date: Monday, February 06, 2017 11:23:15

Hi Kerry

I just received your clearance and have shared the results with Cara W.

Thanks
Shyrose

-----Original Message-----
From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: February 6, 2017 10:20 AM
To: Virani, Shyrose (TBS)
Cc: Colley, Matthew (CA - Toronto)
Subject: RE: please see attached Triton invoice

Hi, Shyrose. Do you have any update on this? Are you still waiting for anything from us regarding the security clearances? Please let me know so I can follow up at our end. Thank you.

Kerry

--
Kerry Danyluk
Partner | National Accounting and Assurance
D: +1 (416) 775 7183
kdanyluk@deloitte.ca | deloitte.ca
--
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-----Original Message-----
From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Tuesday, January 31, 2017 2:14 PM
To: Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Subject: Re: please see attached Triton invoice

Yes I was. I will follow up with Triton again tomorrow

From: Danyluk, Kerry (CA - Toronto)
Sent: Tuesday, January 31, 2017 3:15 PM
To: Virani, Shyrose (TBS)
Cc: Grindley, Clair (CA - Toronto); Gary, Trevor (CA - Toronto)
Subject: RE: please see attached Triton invoice

Hi, Shyrose. I have now completed the security request through Triton. However, neither Clair Grindley nor Trevor Gary have heard from Triton yet. They are copied on this message. I think you were looking for clearances for them as well?

--

Kerry Danyluk
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kdanyluk@deloitte.ca | deloitte.ca<http://www.deloitte.ca/>
--
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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, January 30, 2017 11:47 AM
To: Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Subject: RE: please see attached Triton invoice

Hi Kerry

I just spoke to Triton and they told me that your form was incomplete, therefore you have to fill up the form again, however, you can always skip the pay part since you have already made the payment, kindly follow the link they have provided.

Thanks
shyrose

From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: January 30, 2017 2:30 PM
To: Virani, Shyrose (TBS)
Subject: please see attached Triton invoice

Based on this, my security request was completed in November.

Regards,
Kerry

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RE_ please see attached Triton invoice.rtf

From: Virani, Shyrose (TBS) []
To: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
Subject: RE: please see attached Triton invoice
Date: Monday, January 30, 2017 15:46:59

Hi Kerry

I just spoke to Triton and they told me that your form was incomplete, therefore you have to fill up the form again, however, you can always skip the pay part since you have already made the payment, kindly follow the link they have provided.

Thanks

shyrose

From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: January 30, 2017 2:30 PM
To: Virani, Shyrose (TBS)
Subject: please see attached Triton invoice

Based on this, my security request was completed in November.

Regards,

Kerry

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RE_ please see attached Triton invoice.rtf

From: Virani, Shyrose (TBS) []
To: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
Subject: RE: please see attached Triton invoice
Date: Monday, January 30, 2017 15:39:42

Thanks, Kerry, I will follow up with them and advise you

From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: January 30, 2017 2:30 PM
To: Virani, Shyrose (TBS)
Subject: please see attached Triton invoice

Based on this, my security request was completed in November.

Regards,

Kerry

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Re_ please see attached Triton invoice.rtf

From: Virani, Shyrose (TBS) []
To: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
Subject: Re: please see attached Triton invoice
Date: Tuesday, January 31, 2017 18:14:13

Yes I was. I will follow up with Triton again tomorrow

From: Danyluk, Kerry (CA - Toronto)
Sent: Tuesday, January 31, 2017 3:15 PM
To: Virani, Shyrose (TBS)
Cc: Grindley, Clair (CA - Toronto); Gary, Trevor (CA - Toronto)
Subject: RE: please see attached Triton invoice

Hi, Shyrose. I have now completed the security request through Triton. However, neither Clair Grindley nor Trevor Gary have heard from Triton yet. They are copied on this message. I think you were looking for clearances for them as well?

--

Kerry Danyluk

Partner | National Accounting and Assurance

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kdanyluk@deloitte.ca | deloitte.ca

--

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, January 30, 2017 11:47 AM
To: Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Subject: RE: please see attached Triton invoice

Hi Kerry

I just spoke to Triton and they told me that your form was incomplete, therefore you have to fill up the form again, however, you can always skip the pay part since you have already made the payment, kindly follow the link they have provided.

Thanks

shyrose

From: Danyluk, Kerry (CA - Toronto) [mailto:kdanyluk@deloitte.ca]
Sent: January 30, 2017 2:30 PM
To: Virani, Shyrose (TBS)
Subject: please see attached Triton invoice

Based on this, my security request was completed in November.

Regards,

Kerry

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Azim, Ani (TBS)

From: Hosick, Sarah (TBS)
Sent: May 16, 2017 3:39 PM
To: Petsche, Nadine (TBS)
Cc: Kim Marshall (Kim.Marshall@ieso.ca); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Yes, that was the availability that FAO had if they were to accept the meeting. I expect to hear shortly whether this will be going ahead.

From: Petsche, Nadine (TBS)
Sent: May-16-17 3:37 PM
To: Hosick, Sarah (TBS)
Cc: Kim Marshall (Kim.Marshall@ieso.ca); Veinot, Cindy (TBS)
Subject: FW: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Sarah,
Not sure what the current status is w.r.t. the FAO meeting, but I assume that we're subject to the FAO's availability? Can you check if there are further details available w.r.t timing? I assume that the FAO has suggested an afternoon meeting which is the reason for the request to confirm availability after 2 pm? n

---

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 16, 2017 3:18 PM
To: Picard, Michel; Petsche, Nadine (TBS)
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Any chance for a morning meeting?

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

---

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:48 PM
To: Petsche, Nadine (TBS); Kim Marshall
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

I am working on it.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 2:43 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>

Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Thanks Michel.
I have copied Cindy's assistant, Sarah Hosick, so that she is aware of the requirements. We are still awaiting confirmation of the details for a meeting. Given the short turnaround time, do you think it would be prudent to initiate the requisite approvals on a 'contingency' basis?
Thanks again.
Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:37 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Hi Nadine,

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Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 1:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

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I have been asked to confirm your availability for a 1 hour meeting/call tomorrow afternoon after 2 pm.
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From: Kim Marshall
To: Picard, Michel; Petsche, Nadine (TBS)
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: May 16, 2017 3:18:32 PM

Any chance for a morning meeting?

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

---

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:48 PM
To: Petsche, Nadine (TBS); Kim Marshall
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

I am working on it.

> **From:** Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
> **Sent:** Tuesday, May 16, 2017 2:43 PM
> **To:** Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
> **Cc:** Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
> **Subject:** RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
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> Thanks Michel.
> I have copied Cindy's assistant, Sarah Hosick, so that she is aware of the requirements. We are still awaiting confirmation of the details for a meeting. Given the short turnaround time, do you think it would be prudent to initiate the requisite approvals on a 'contingency' basis?
> Thanks again.
> Nadine

> **From:** Picard, Michel [mailto:mpicard@kpmg.ca]
> **Sent:** May 16, 2017 2:37 PM
> **To:** Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
> **Cc:** Hosick, Sarah (TBS)
> **Subject:** RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

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Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 1:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

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Azim, Ani (TBS)

From: Picard, Michel <mpicard@kpmg.ca>
Sent: May 16, 2017 2:48 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

I am working on it.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 2:43 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

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Sent: May 16, 2017 2:37 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)
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To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
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From: Petsche, Nadine (TBS)
To: Picard, Michel
Subject: Re: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: May 16, 2017 3:03:04 PM

Thx

From: Picard, Michel
Sent: Tuesday, May 16, 2017 2:48 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

I am working on it.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 2:43 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Thanks Michel.
I have copied Cindy's assistant, Sarah Hosick, so that she is aware of the requirements. We are still awaiting confirmation of the details for a meeting. Given the short turnaround time, do you think it would be prudent to initiate the requisite approvals on a 'contingency' basis?
Thanks again.
Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:37 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Hi Nadine,

I have availability to attend a meeting after 2pm tomorrow. It should not be a call. However, I am required to obtain authorization from our risk management department. Assuming they accept, we will need, as a minimum, to obtain from IESO a consent, release and indemnity letter.

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 1:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Kim/Michel,
I understand that a call/meeting is being contemplated for tomorrow afternoon with staff from the FAO to discuss accounting for the FHP. The primary purpose for the meeting is to help the FAO staff to better understand the accounting elements of the GA Refinancing structure to help them as they finalize a report on the topic.
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From: Petsche, Nadine (TBS)
To: Picard, Michel; Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: May 16, 2017 2:42:00 PM

Thanks Michel.
I have copied Cindy's assistant, Sarah Hosick, so that she is aware of the requirements. We are still awaiting confirmation of the details for a meeting. Given the short turnaround time, do you think it would be prudent to initiate the requisite approvals on a 'contingency' basis?
Thanks again.
Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 16, 2017 2:37 PM
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

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Regards,

Michel

> **From:** Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
> **Sent:** Tuesday, May 16, 2017 1:31 PM
> **To:** Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
> **Cc:** Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
> **Subject:** Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
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From: Picard, Michel
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: May 16, 2017 2:37:15 PM

Hi Nadine,

I have availability to attend a meeting after 2pm tomorrow. It should not be a call. However, I am required to obtain authorization from our risk management department. Assuming they accept, we will need, as a minimum, to obtain from IESO a consent, release and indemnity letter.

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 1:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

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RE_ Potential meeting times re_ IFRS Assurance for AG (UPDATE).rtf

From: Petsche, Nadine (TBS) []
To: MAUTI John -FIN & C CTRL (john.mauti@opg.com) [john.mauti@opg.com]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; KOGAN Alex -FIN & C CTRL [alexander.kogan@opg.com]; karen.newman@HydroOne.com [karen.newman@HydroOne.com]; 'Samir.Chhelavda@HydroOne.com' [Samir.Chhelavda@HydroOne.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; 'Rob Scullion' (rob.c.scullion@ca.ey.com) [rob.c.scullion@ca.ey.com]; 'Sabrina Fabina' (sabrina.b.fabina@ca.ey.com) [sabrina.b.fabina@ca.ey.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RE: Potential meeting times re: IFRS Assurance for AG (UPDATE)
Date: Monday, February 29, 2016 17:34:17

All,
I've just received the details on the OAG IFRS planning discussion. It appears that the meeting is not being scheduled for this week, but rather towards the latter part of this month. Nadine

-----Original Appointment-----
From: Christine Wu [mailto:Christine.Wu@auditor.on.ca]
Sent: February 29, 2016 4:24 PM
To: Christine Wu; Bonnie Lysyk; Susan Klein; Bill Pelow; Barry Neilson; Audelyn Budihardjo; Michael.Vels@HydroOne.com; Carlo.Crozzoli@opg.com; Batra, Sanjeev (TBS); Petsche, Nadine (TBS); Jessica.Davis@HydroOne.com; diane.morgan@opg.com
Subject: 10:30 Mtg w/ OPG, Hydro One, MOF re January 27 Letter
When: March 24, 2016 10:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 20 Dundas St. W., 15 Fl

When: Thursday, March 24, 2016 10:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 20 Dundas St. W., 15 Fl

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*~*

Christine @ 416-327-2388

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-----Original Message-----
From: Petsche, Nadine (TBS)
Sent: February 23, 2016 5:23 PM
To: MAUTI John -FIN & C CTRL (john.mauti@opg.com); 'CHENG Alec -FIN & C CTRL'; 'KOGAN Alex -FIN & C CTRL'; karen.newman@HydroOne.com; 'Samir.Chhelavda@HydroOne.com'
Cc: Virani, Shyrose (TBS); 'Rob Scullion' (rob.c.scullion@ca.ey.com); 'Sabrina Fabina' (sabrina.b.fabina@ca.ey.com); Picard, Michel (mpicard@kpmg.ca)
Subject: RE: Potential meeting times re: IFRS Assurance for AG (UPDATE)

All,
We just finished our marathon 3 hour meeting with the AG and due to the AG's non-availability for Mar7-11, we will be targeting a meeting time for next week (Feb 29 - Mar 4) instead.

Since the AG's original letters were addressed to the CFOs at OPG and H1, she will plan to reach out to them as the primary point of contact to initiate the joint meeting to review the assurance approach. She

does acknowledge that their presence is not necessary, but would like to invite them and leave it to their discretion if they want to attend. As a minimum, she will request that the Controllers for OPG and H1 attend, and I think I made an effective case for participation of your external auditors as well.

Once I hear further details on a proposed date for a meeting I'll let you know. In the meantime, if her office contacts your respective CFOs regarding a planned meeting time please plan to share the details so that we can all put a hold on our calendars.

Thanks.
Nadine

-----Original Message-----
From: Petsche, Nadine (TBS)
Sent: February 23, 2016 10:29 AM
To: MAUTI John -FIN & C CTRL (john.mauti@opg.com); 'CHENG Alec -FIN & C CTRL'; KOGAN Alex -FIN & C CTRL; karen.newman@HydroOne.com; 'Samir.Chhelavda@HydroOne.com'; 'Rob Scullion' (rob.c.scullion@ca.ey.com); 'Sabrina Fabina' (sabrina.b.fabina@ca.ey.com)
Cc: Virani, Shyrose (TBS)
Subject: Potential meeting times re: IFRS Assurance for AG

All,
Please advise of any concerns w.r.t. the following potential meeting times to discuss the proposed 'alternative' IFRS assurance procedures with the AG and her staff. For those unable to attend in person, we will request a teleconference option. Once we've heard back from you we will confirm the AG's availability.
Regards,
Nadine

March 7th between 9 and 12
March 8th between 10 and 12

RE_ Potential meeting times re_ IFRS Assurance for AG (UPDATE).rtf

From: Petsche, Nadine (TBS) []
To: MAUTI John -FIN & C CTRL (john.mauti@opg.com) [john.mauti@opg.com]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; KOGAN Alex -FIN & C CTRL [alexander.kogan@opg.com]; karen.newman@HydroOne.com [karen.newman@HydroOne.com]; 'Samir.Chhelavda@HydroOne.com' [Samir.Chhelavda@HydroOne.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; 'Rob Scullion' (rob.c.scullion@ca.ey.com) [rob.c.scullion@ca.ey.com]; 'Sabrina Fabina' (sabrina.b.fabina@ca.ey.com) [sabrina.b.fabina@ca.ey.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RE: Potential meeting times re: IFRS Assurance for AG (UPDATE)
Date: Tuesday, February 23, 2016 18:22:51

All,
We just finished our marathon 3 hour meeting with the AG and due to the AG's non-availability for Mar7-11, we will be targeting a meeting time for next week (Feb 29 - Mar 4) instead.

Since the AG's original letters were addressed to the CFOs at OPG and H1, she will plan to reach out to them as the primary point of contact to initiate the joint meeting to review the assurance approach. She does acknowledge that their presence is not necessary, but would like to invite them and leave it to their discretion if they want to attend. As a minimum, she will request that the Controllers for OPG and H1 attend, and I think I made an effective case for participation of your external auditors as well.

Once I hear further details on a proposed date for a meeting I'll let you know. In the meantime, if her office contacts your respective CFOs regarding a planned meeting time please plan to share the details so that we can all put a hold on our calendars.

Thanks.
Nadine

-----Original Message-----
From: Petsche, Nadine (TBS)
Sent: February 23, 2016 10:29 AM
To: MAUTI John -FIN & C CTRL (john.mauti@opg.com); 'CHENG Alec -FIN & C CTRL'; KOGAN Alex -FIN & C CTRL; karen.newman@HydroOne.com; 'Samir.Chhelavda@HydroOne.com'; 'Rob Scullion' (rob.c.scullion@ca.ey.com); 'Sabrina Fabina' (sabrina.b.fabina@ca.ey.com)
Cc: Virani, Shyrose (TBS)
Subject: Potential meeting times re: IFRS Assurance for AG

All,
Please advise of any concerns w.r.t. the following potential meeting times to discuss the proposed 'alternative' IFRS assurance procedures with the AG and her staff. For those unable to attend in person, we will request a teleconference option. Once we've heard back from you we will confirm the AG's availability.
Regards,
Nadine

March 7th between 9 and 12
March 8th between 10 and 12

RE_ pre- Joint Working Group Teleconference.rtf

From: Virani, Shyrose (FIN) []
To: Virani, Shyrose (FIN) [Shyrose.Virani@ontario.ca]; 'cheryl.wenezenkiYolland@gov.bc.ca' [cheryl.wenezenkiYolland@gov.bc.ca]; 'rafusebg@gov.ns.ca' [rafusebg@gov.ns.ca]; 'Betty-Anne Pratt' [betty-anne.pratt@gov.mb.ca]; 'John Morgan' [morgan.john@tbs-sct.gc.ca]; 'bernard.turgeon@finances.gouv.qc.ca' [bernard.turgeon@finances.gouv.qc.ca]; 'doug.lynkowski@gov.ab.ca' [doug.lynkowski@gov.ab.ca]; 'McConnell, Sheena FIN:EX' [Sheena.McConnell@gov.bc.ca]; Petsche, Nadine (FIN) [Nadine.Petsche@ontario.ca]; Bennett, Bruce L. (FIN) [Bruce.Bennett@ontario.ca]; Psinas, John (FIN) [John.Psinas@ontario.ca]; Danek, Mary (FIN) [Mary.Danek@ontario.ca]; 'Macisaab@gov.ns.ca' [Macisaab@gov.ns.ca]; 'dmatheson@gov.mb.ca' [dmatheson@gov.mb.ca]; 'giuseppina.floccari@tbs-sct.gc.ca' [giuseppina.floccari@tbs-sct.gc.ca]; 'stephanie.picard@finances.gouv.qc.ca' [stephanie.picard@finances.gouv.qc.ca]; 'Cheryl.Davis@gov.ab.ca' [Cheryl.Davis@gov.ab.ca]; 'helen.hasiuk@gov.mb.ca' [helen.hasiuk@gov.mb.ca]
CC: Bourbeau, Marc (FIN) [Marc.Bourbeau@ontario.ca]
Subject: RE: pre- Joint Working Group Teleconference
Date: Wednesday, November 05, 2008 15:54:43

Pls. note the passcode is 72727#.

Thank you
shyrose

From: Virani, Shyrose (FIN)
Sent: Wednesday, November 05, 2008 2:31 PM
To: 'cheryl.wenezenkiYolland@gov.bc.ca'; 'rafusebg@gov.ns.ca'; 'Betty-Anne Pratt'; 'John Morgan'; 'bernard.turgeon@finances.gouv.qc.ca'; 'doug.lynkowski@gov.ab.ca'; 'McConnell, Sheena FIN:EX'; Petsche, Nadine (FIN); Bennett, Bruce L. (FIN); Psinas, John (FIN); Danek, Mary (FIN); 'Macisaab@gov.ns.ca'; 'dmatheson@gov.mb.ca'; 'giuseppina.floccari@tbs-sct.gc.ca'; 'stephanie.picard@finances.gouv.qc.ca'; 'Cheryl.Davis@gov.ab.ca'; 'helen.hasiuk@gov.mb.ca'
Cc: Bourbeau, Marc (FIN)
Subject: RE: pre- Joint Working Group Teleconference

Please note the pre-Joint Working Group teleconference is confirmed for tommorrow (Thursday, November 6th) from 1:00 p.m. - 1:30 p.m. Toronto time.

Teleconference details as follows:

416-212-0400 local
1-866-355-2663 long distance - passcode 7-2727#

Thank you.
Shyrose Virani

From: Virani, Shyrose (FIN)
Sent: Wednesday, November 05, 2008 11:04 AM
To: 'cheryl.wenezenkiYolland@gov.bc.ca'; 'rafusebg@gov.ns.ca'; 'Betty-Anne Pratt'; 'John Morgan'; 'bernard.turgeon@finances.gouv.qc.ca'; 'doug.lynkowski@gov.ab.ca'; 'McConnell, Sheena FIN:EX'; Petsche, Nadine (FIN); Bennett, Bruce L. (FIN); Psinas, John (FIN); Danek, Mary (FIN); 'Macisaab@gov.ns.ca'; 'dmatheson@gov.mb.ca'; 'giuseppina.floccari@tbs-sct.gc.ca'; 'stephanie.picard@finances.gouv.qc.ca'; 'Cheryl.Davis@gov.ab.ca'

Cc: Bourbeau, Marc (FIN)
Subject: pre- Joint Working Group Teleconference

Sent on behalf of Bruce Bennett

Cheryl/Byron/Betty-Anne/John/Bernard/Doug,

There has been a request for a brief pre-JWG meeting teleconference among Controllers. Please confirm your availability to attend a conference call on Thursday (November 6th) from 1:00 p.m. - 1:30 p.m. (Toronto time). A confirmation note together with logistics will be provided once details are finalized.

Thank you.
Shyrose Virani

Provincial Protection and Assurances

Indicative Term Sheet[1]

Ontario Fair Hydro Plan Act, 2017

*This term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 and the regulations to be made thereunder (the "**Act**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*

Servicing Guarantees	
Servicing Guarantor:	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together.
Beneficiaries:	Each Financing Entity that owns an investment interest from time to time. A Financing Entity may grant a security interest over its rights and interests under a Servicing Guarantee to its creditors and contractual counterparties, including any indenture trustee acting on behalf of itself and other persons having debt or other claims against the Financing Entity that are secured under a related trust indenture.

[1] This draft term sheet is intended for discussion purposes only and does not represent a commitment of any party. Any agreement or undertaking of the Province contemplated in this term sheet may only be made either (a) with the approval of the Lieutenant Governor in Council as contemplated in subsection 5(2) of the Act or (b) under, and subject to, an order made by the Lieutenant Governor in Council as contemplated in subsection 5(3) of the Act.

Servicing Guarantee:	Pursuant to a Servicing Guarantee, the Servicing Guarantor will guarantee the performance, or cause the performance, of the obligations of IESO as servicer under the Act and under any agreement under which the applicable Financing Entity acquires an investment interest from IESO and IESO undertakes on-going obligations in respect of such investment interest, including servicing obligations undertaken by IESO to enforce the performance by electricity vendors of their respective obligations under the Act. It is anticipated that such obligations will include matters related to the billing, collection and remittance of clean energy adjustments by IESO and electricity vendors, as the case may be, and regarding the commingling by IESO and electricity vendors of collections of clean energy adjustments with other amounts. In the event that the Servicing Guarantee is held to be unenforceable against the Servicing Guarantor, the Servicing Guarantee will contemplate, in the alternative, a functionally equivalent direct covenant of the Servicing Guarantor.
Term:	The Servicing Guarantor's obligations under a Servicing Guarantee in respect of a Financing Entity will continue during the term of any obligation incurred by the Financing Entity that is or is intended to be secured by the Servicing Guarantee.
Satisfaction of a Servicing Guarantee:	The Servicing Guarantor will have the option to satisfy its obligations under a Servicing Guarantee by paying when due the amounts that would be remitted to the applicable Financing Entity assuming that IESO and each electricity vendor had complied with its obligations under the Act and under any agreement under which the applicable Financing Entity acquires an investment interest from IESO and IESO undertakes on-going obligations in respect of such investment interest.
Approval Requirement:	The servicing obligations (including any amendments) to which the Servicing Guarantee relates, together with the provisions of any Servicing Guarantee itself, will be subject to the approval of the Minister of Energy and the Minister of Finance acting together.
Limits under Servicing Guarantee:	Under no circumstances shall the Servicing Guarantor be obligated to pay consequential, special or punitive damages, or for economic loss or loss of profits.

Indemnity	
Indemnitor:	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together, or an entity owned by the Province of Ontario whose indemnity obligations, as contemplated by this Term Sheet, are in turn unconditionally guaranteed by the Province of Ontario.
Indemnitees:	Each Financing Entity that owns an investment interest from time to time. A Financing Entity may grant a security interest over the Indemnity to specified creditors, including to an indenture trustee under a trust indenture on behalf of itself and other persons having debt or other claims against the Financing Entity secured under the trust indenture.
Indemnity of the Province:	The Indemnitor will indemnify each Indemnitee for its costs, expenses and losses reasonably incurred by the Indemnitee because of third party claims made against the Indemnitee by one or more of its specified creditors that result from any of the following: (A) the Legislative Assembly of Ontario repealing (and not replacing on an equivalent basis) the Act; (B) the Legislative Assembly of Ontario amending the Act or a Regulation made thereunder in a way that materially and adversely affects the rights and interests of the Financing Entity under its investment interest; or (C) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act is *ultra vires* in a way that materially and adversely affects the rights and interests of the Financing Entity under its investment interest.
Term:	An Indemnity will continue during the term of any obligation incurred by a Financing Entity that is or is intended to be secured by the Indemnity.

Satisfaction of an Indemnity:	The Indemnitor will have the option to satisfy its obligations under an Indemnity in respect of a funding obligation by: (x) assuming and paying when due (without acceleration) the regularly scheduled amounts due and payable in respect of the funding obligation during the term and to the extent of the applicable Financing Entity's contractual obligations thereunder; or (y) causing the acceleration of the funding obligation and paying the outstanding amount owing thereunder in full, including in the case of debt instruments issued by the applicable Financing Entity by causing the redemption of the debt instruments and paying an amount equal to the then outstanding principal amount thereof plus accrued and unpaid interest up to the date of payment (without any default, penalty, prepayment or make whole premium).
Approval Requirement:	The terms and conditions of the obligations incurred by a Financing Entity that are secured or intended to be secured by an Indemnity, together with the provisions of any Indemnity itself, will be subject to the approval of the Minister of Energy and the Minister of Finance acting together.
Limits under Indemnity:	Under no circumstances shall the Indemnitor be obligated to indemnify any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.
Undertakings regarding Certain Mismatches	
Addressing Mismatches	If a Financing Entity proposes to incur one or more funding obligations that would require the Financing Entity to pay an aggregate amount during any reference period that would exceed the amount otherwise expected to be available to the Financing Entity during the reference period from its investment interests to pay such amounts (a "**Mismatch**"), the Financing Entity will, before incurring such funding obligations, undertake commercially reasonable efforts to arrange for commitments from highly creditworthy, market-based funding sources in accordance with the Financing Plan to enable it to satisfy its related payment obligations and thereby address any Mismatch.

Possible Undertaking to Fund Mismatches	If a Financing Entity is unable to arrange for commitments from one or more highly creditworthy, market-based funding sources in accordance with the Financing Plan to address a Mismatch on commercially reasonable terms and conditions, the Minister of Energy and the Minister of Finance acting together may undertake on behalf of the Province of Ontario to provide funding commitments to the extent necessary to provide the Financing Entity with required funding to address the Mismatch. Any such undertaking would be provided at or before the incurrence of the funding obligation that would otherwise result in the Mismatch and, if given, would be on such terms, including appropriate compensation to the Province of Ontario, and be subject to such conditions (for example and without limitation, funding being conditional on the occurrence of a market disruption that results in the non-availability of capital markets term funding to effect a refinancing of the funding obligation) as the Minister of Energy and the Minister of Finance determine are reasonable and appropriate in the circumstances. The decision to provide such an undertaking will be in the sole discretion of the Minister of Energy and the Minister of Finance.
Documentation	
Representations, Terms and Conditions:	Subject to approval of the Minister of Energy and the Minister of Finance acting together.
FIPPA:	Acknowledgement that the Servicing Guarantor and the Indemnitor will be bound by the *Freedom of Information and Protection of Privacy Act (Ontario)* and that any information provided to the Servicing Guarantor or the Indemnitor, or any agent or representative of the Servicing Guarantor or the Indemnitor, in connection with the transaction documents may be subject to disclosure in accordance with that act or as otherwise required by law.
Confidentiality Obligations:	Confidentiality obligations of each Financing Entity and its assignees, representatives and agents as may be determined to be appropriate by the Minister of Energy and the Minister of Finance acting together.
Governing Law:	Province of Ontario.

Provincial Protection and Assurances

Indicative Term Sheet[1]

Ontario Fair Hydro Plan Act, 2017

*This term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 and the regulations to be made thereunder (the "**Act**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*

~~Performance~~Servicing Guarantees	
~~Performance~~Servicing Guarantor:	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together.
Beneficiaries:	Each Financing Entity that owns an investment interest from time to time. A Financing Entity may grant a security interest over its rights and interests under a ~~Performance~~Servicing Guarantee to its creditors and contractual counterparties, including any indenture trustee acting on behalf of itself and other persons having debt or other claims against the Financing Entity that are secured under a related trust indenture.
~~Performance~~Servicing Guarantee:	Pursuant to a ~~Performance~~Servicing Guarantee, the ~~Performance~~Servicing Guarantor will guarantee the performance, or cause the performance, of the obligations of IESO as servicer under the Act and under any agreement under which the applicable Financing Entity acquires an investment interest from IESO and IESO undertakes on-going obligations in respect of such investment interest, including servicing obligations undertaken by IESO to enforce the performance by electricity vendors of their respective obligations under the Act. It is anticipated that such obligations will include matters related to the billing, collection and remittance of clean energy adjustments by IESO and electricity vendors, as the case may be, and regarding the commingling by IESO and electricity vendors of collections of clean energy

[1] This draft term sheet is intended for discussion purposes only and does not represent a commitment of any party. Any agreement or undertaking of the Province contemplated in this term sheet may only be made either (a) with the approval of the Lieutenant Governor in Council as contemplated in subsection 5(2) of the Act or (b) under, and subject to, an order made by the Lieutenant Governor in Council as contemplated in subsection 5(3) of the Act.

	adjustments with other amounts. In the event that the ~~Performance~~Servicing Guarantee is held to be unenforceable against the ~~Performance~~Servicing Guarantor, the ~~Performance~~Servicing Guarantee will contemplate, in the alternative, a functionally equivalent direct covenant of the ~~Performance~~Servicing Guarantor.
Term:	The ~~Performance~~Servicing Guarantor's obligations under a ~~Performance~~Servicing Guarantee in respect of a Financing Entity will continue during the term of any obligation incurred by the Financing Entity that is or is intended to be secured by the ~~Performance~~Servicing Guarantee.
Satisfaction of a Servicing Guarantee:	The Servicing Guarantor will have the option to satisfy its obligations under a Servicing Guarantee by paying when due the amounts that would be remitted to the applicable Financing Entity assuming that IESO and each electricity vendor had complied with its obligations under the Act and under any agreement under which the applicable Financing Entity acquires an investment interest from IESO and IESO undertakes on-going obligations in respect of such investment interest.
Approval Requirement:	The servicing obligations (including any amendments) to which the ~~Performance~~Servicing Guarantee relates, together with the provisions of any ~~Performance~~Servicing Guarantee itself, will be subject to the approval of the Minister of Energy and the Minister of Finance acting together.
Limits under ~~Performance~~Servicing Guarantee:	Under no circumstances shall the ~~Performance~~Servicing Guarantor be obligated to pay consequential, special or punitive damages, or for economic loss or loss of profits.

Indemnity	
Indemnitor:	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together, or an entity owned by the Province of Ontario whose indemnity obligations, as contemplated by this Term Sheet, are in turn unconditionally guaranteed by the Province of Ontario.
Indemnitees:	Each Financing Entity that owns an investment interest from time to time. A Financing Entity may grant a security interest over the Indemnity to specified creditors, including to an indenture trustee under a trust indenture on behalf of itself and other persons having debt or other claims against the Financing Entity secured under the trust indenture.
Indemnity of the Province:	The Indemnitor will indemnify each Indemnitee for its costs, expenses and losses reasonably incurred by the Indemnitee because of third party claims made against the Indemnitee by one or more of its specified creditors that result from any of the following ~~(each, an "**Indemnification Event**")~~: (A) the Legislative Assembly of Ontario repealing (and not replacing on an equivalent basis) the Act; (B) the Legislative Assembly of Ontario amending the Act or a Regulation made thereunder in a way that materially and adversely affects the rights and interests of the Financing Entity under its investment interest; or (C) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act is *ultra vires* in a way that materially and adversely affects the rights and interests of the Financing Entity under its investment interest.
Term:	~~The~~An Indemnity will continue during the term of any obligation incurred by a Financing Entity that is or is intended to be secured by the Indemnity.
Satisfaction of an Indemnity:	The Indemnitor will have the option to satisfy its obligations under an Indemnity in respect of a funding obligation by: (x) assuming and paying when due (without acceleration) the regularly scheduled amounts due and payable in respect of

	the funding obligation during the term and to the extent of the applicable Financing Entity's contractual obligations thereunder; or (y) causing the acceleration of the funding obligation and paying the outstanding amount owing thereunder in full, including in the case of debt instruments issued by the applicable Financing Entity by causing the redemption of the debt instruments and paying an amount equal to the then outstanding principal amount thereof plus accrued and unpaid interest up to the date of payment (without any default, penalty, prepayment or make whole premium).
Approval Requirement:	The terms and conditions of the obligations incurred by a Financing Entity that are secured or intended to be secured by an Indemnity, together with the provisions of any Indemnity itself, will be subject to the approval of the Minister of Energy and the Minister of Finance acting together.
Limits under Indemnity:	Under no circumstances shall the Indemnitor be obligated to indemnify any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.
Undertakings regarding Certain Mismatches	
~~**Avoidance of**~~**Addressing Mismatches**	If a Financing Entity proposes to incur one or more funding obligations that would require the Financing Entity to pay an aggregate amount during any reference period that would exceed the amount otherwise expected to be available to the Financing Entity during the reference period from its investment interests to pay such amounts (a "**Mismatch**"), the Financing Entity will, before incurring such funding obligations, undertake commercially reasonable efforts to arrange for commitments from highly creditworthy, market-based funding sources in accordance with the Financing Plan to enable it to satisfy its related payment obligations and thereby ~~avoid~~address any Mismatch.
Possible Undertaking to Fund Mismatches	If a Financing Entity is unable to arrange for commitments from one or more highly creditworthy, market-based funding sources in accordance with the Financing Plan to ~~avoid~~address a Mismatch on commercially reasonable terms and conditions, the Minister of Energy and the Minister of Finance acting together may undertake

	on behalf of the Province of Ontario to provide funding commitments to the extent necessary to provide the Financing Entity with required funding to ~~avoid~~address the Mismatch. Any such undertaking ~~may only~~would be ~~given~~provided at or before the incurrence of the funding obligation that would otherwise result in the Mismatch and, if given, would be on such terms, including appropriate compensation to the Province of Ontario, and be subject to such conditions (for example and without limitation, funding being conditional on the occurrence of a market disruption that results in ~~an inability to refinance~~the non-availability of capital markets term funding to effect a refinancing of the funding obligation) as the Minister of Energy and the Minister of Finance determine are reasonable and appropriate in the circumstances. The decision to provide such an undertaking will be in the sole discretion of the Minister of Energy and the Minister of Finance.
Documentation	
Representations, Terms and Conditions:	Subject to approval of the Minister of Energy and the Minister of Finance acting together.
FIPPA:	Acknowledgement that the ~~Performance~~Servicing Guarantor and the Indemnitor will be bound by the *Freedom of Information and Protection of Privacy Act (Ontario)* and that any information provided to the ~~Performance~~Servicing Guarantor or the Indemnitor, or any agent or representative of the ~~Performance~~Servicing Guarantor or the Indemnitor, in connection with the transaction documents may be subject to disclosure in accordance with that act or as otherwise required by law.
Confidentiality Obligations:	Confidentiality obligations of each Financing Entity and its assignees, representatives and agents as may be determined to be appropriate by the Minister of Energy and the Minister of Finance acting together.
Governing Law:	Province of Ontario.

Document comparison by Workshare Compare on Thursday, June 22, 2017 6:12:32 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23148306/6
Description	TOR_2528-#23148306-v6-Term_Sheet_-_Provincial_Support_Agreement_-_May_12
Document 2 ID	PowerDocs://TOR_2528/23148306/7
Description	TOR_2528-#23148306-v7-Term_Sheet_-_Provincial_Support_Agreement_-_May_12
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	47
Deletions	33
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	80

From:	ASHBOURNE, STEPHEN
To:	Gavaris, Hresa (OFA); Devine, James (OFA); Yep, Carlos (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); He, Gavin (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Hume, Steen (ENERGY); Cox, Hilary (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); "Susan.Thompson@tdsecurities.com"; McKinlay, Tom (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Hosick, Sarah (TBS); JACKSON, ADAM; maharukh.hilloowala@TDSECURITIES.com
Cc:	Laing, Mark; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject:	RE: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes
Date:	June 22, 2017 6:26:53 PM
Attachments:	23148306-vpdf-Term Sheet - Provincial Support Agreement - May 12.PDF 23148306-v7-Term Sheet - Provincial Support Agreement - May 12.DOCX

Hi. Here is a revised version of the Term Sheet, including to reflect the comments discussed at our meeting this morning. Please pass on any final comments at your earliest opportunity. I will be travelling tomorrow, so please be sure to copy in my colleague, Adam Jackson (adam.jackson@blakes.com), in any response. Thanks very much, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

-----Original Appointment-----
From: Hresa Gavaris [mailto:Hresa.Gavaris@ofina.on.ca]
Sent: Wednesday, June 21, 2017 9:14 AM
To: Hresa Gavaris; James Devine; Carlos Yep; Ken Kandeepan; Ronald Kwan; Gavin He; Gadi Mayman; Anna Strathy; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN; Steen Hume (CAB); Hilary Cox (ENE); Carolyn Calwell (MCSS); 'Susan.Thompson@tdsecurities.com'; Tom McKinlay (MAG); Scott Nelms (ENERGY); 'cindy.veinot@ontario.ca'; 'sarah.hosick@ontario.ca'; JACKSON, ADAM
Cc: Laing, Mark
Subject: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes
When: Thursday, June 22, 2017 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Executive Boardroom, 14th Floor, 1 Dundas Street West

CM teleconference 416-406-5763 or 1-866-596-5280 p/c 9763326#

———————————

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents
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From:	JACKSON, ADAM
To:	Laing, Mark; ASHBOURNE, STEPHEN; Gavaris, Hresa (OFA); Devine, James (OFA); Yep, Carlos (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); He, Gavin (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Hume, Steen (ENERGY); Cox, Hilary (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Thompson, Susan; McKinlay, Tom (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Hosick, Sarah (TBS); Hilloowala, Maharukh
Cc:	Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject:	RE: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes
Date:	June 23, 2017 2:03:13 PM
Attachments:	23148306v7_Term Sheet - Provincial Support Agreement - May 12 - 23148306....pdf 23148306-v8-Term Sheet - Provincial Support Agreement - May 12.DOCX

All,

I attach a revised draft of the indicative term sheet for the provincial support arrangement in clean and blackline. This draft includes one clarification to the section entitled “Satisfaction of a Servicing Guarantee”.

I have retained clause (y) in the Satisfaction of an Indemnity section for the time being, as I understand that this optionality is important to the OFA. That said, let us know if the OFA has any further comments or questions based on Mark’s email below.

Please let us know if you have any further comments, or if you are signed-off on this draft as soon as possible this afternoon, as I understand that the Department of Energy plans to send a revised draft to OPG before the close of business today.

Kind regards,
Adam

Adam Jackson
adam.jackson@blakes.com
Dir: 416-863-4324

From: Laing, Mark [mailto:Mark.Laing@tdsecurities.com]
Sent: Friday, June 23, 2017 12:31 PM
To: ASHBOURNE, STEPHEN; Hresa Gavaris; James Devine; Carlos Yep; Ken Kandeepan; Ronald Kwan; Gavin He; Gadi Mayman; Anna Strathy; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Steen Hume (CAB); Hilary Cox (ENE); Carolyn Calwell (MCSS); Thompson, Susan; Tom McKinlay (MAG); Scott Nelms (ENERGY); 'cindy.veinot@ontario.ca'; 'sarah.hosick@ontario.ca'; JACKSON, ADAM; Hilloowala, Maharukh
Cc: Carolyn.Calwell@ontario.ca
Subject: RE: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes

Hi all,

I know that the concept of an accelerated payment was discussed in yesterday's call and speaking with Steve this is the rationale for including clause (y) in the Satisfaction of an Indemnity section:

(y) causing the acceleration of the funding obligation and paying the outstanding amount owing thereunder in full, including in the case of debt instruments issued by the applicable Financing Entity by causing the redemption of the debt instruments and paying an amount equal to the then outstanding principal amount thereof plus accrued and unpaid interest up to the date of payment (without any default, penalty, prepayment or make whole premium).

However, we want to note that the ability to redeem the bonds at par (plus accrued) would be off market and could hinder the marketability of an offering. Happy to discuss further. Thanks,

ML

Mark Laing | Vice President | Debt Capital Markets | **TD Securities**
Ernst & Young Tower, 222 Bay Street, 7th Floor, Toronto, ON M5K 1A2
T: (416) 983-8543 | M: (647) 242-5567 | F: (416) 308-3715 | mark.laing@tdsecurities.com

http://www.tdsecurities.com/tds/content/SalesTrading_Disclaimer?language=en_CA
http://www.tdsecurities.com/tds/content/SalesTrading_Disclaimer?language=fr_CA

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, June 22, 2017 6:27 PM
To: Hresa Gavaris; James Devine; Carlos Yep; Ken Kandeepan; Ronald Kwan; Gavin He; Gadi Mayman; Anna Strathy; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); Steen Hume (CAB); Hilary Cox (ENE); Carolyn Calwell (MCSS); Thompson, Susan; Tom McKinlay (MAG); Scott Nelms (ENERGY); 'cindy.veinot@ontario.ca'; 'sarah.hosick@ontario.ca'; JACKSON, ADAM; Hilloowala, Maharukh
Cc: Laing, Mark; Carolyn.Calwell@ontario.ca
Subject: RE: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes

Hi. Here is a revised version of the Term Sheet, including to reflect the comments discussed at our meeting this morning. Please pass on any final comments at your earliest opportunity. I will be travelling tomorrow, so please be sure to copy in my colleague, Adam Jackson (adam.jackson@blakes.com), in any response. Thanks very much, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

-----Original Appointment-----
From: Hresa Gavaris [mailto:Hresa.Gavaris@ofina.on.ca]
Sent: Wednesday, June 21, 2017 9:14 AM
To: Hresa Gavaris; James Devine; Carlos Yep; Ken Kandeepan; Ronald Kwan; Gavin He; Gadi Mayman; Anna Strathy; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN; Steen Hume (CAB); Hilary Cox (ENE); Carolyn Calwell (MCSS); 'Susan.Thompson@tdsecurities.com'; Tom McKinlay (MAG); Scott Nelms (ENERGY); 'cindy.veinot@ontario.ca'; 'sarah.hosick@ontario.ca'; JACKSON, ADAM
Cc: Laing, Mark
Subject: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes
When: Thursday, June 22, 2017 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Executive Boardroom, 14th Floor, 1 Dundas Street West

CM teleconference 416-406-5763 or 1-866-596-5280 p/c 9763326#

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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Provincial Protection and Assurances

Indicative Term Sheet[1]

Ontario Fair Hydro Plan Act, 2017

*This term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 and the regulations to be made thereunder (the "**Act**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate.*

Servicing Guarantees	
Servicing Guarantor:	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together.
Beneficiaries:	Each Financing Entity that owns an investment interest from time to time. A Financing Entity may grant a security interest over its rights and interests under a Servicing Guarantee to its creditors and contractual counterparties, including any indenture trustee acting on behalf of itself and other persons having debt or other claims against the Financing Entity that are secured under a related trust indenture.
Servicing Guarantee:	Pursuant to a Servicing Guarantee, the Servicing Guarantor will guarantee the performance, or cause the performance, of the obligations of IESO as servicer under the Act and under any agreement under which the applicable Financing Entity acquires an investment interest from IESO and IESO undertakes on-going obligations in respect of such investment interest, including servicing obligations undertaken by IESO to enforce the performance by electricity vendors of their respective obligations under the Act. It is anticipated that such obligations will include matters related to the billing, collection and remittance of clean energy adjustments by IESO and electricity vendors, as the case may be, and regarding the commingling by IESO and electricity vendors of collections of clean energy adjustments with other amounts. In the event that the Servicing Guarantee is held to be

[1] This draft term sheet is intended for discussion purposes only and does not represent a commitment of any party. Any agreement or undertaking of the Province contemplated in this term sheet may only be made either (a) with the approval of the Lieutenant Governor in Council as contemplated in subsection 5(2) of the Act or (b) under, and subject to, an order made by the Lieutenant Governor in Council as contemplated in subsection 5(3) of the Act.

	unenforceable against the Servicing Guarantor, the Servicing Guarantee will contemplate, in the alternative, a functionally equivalent direct covenant of the Servicing Guarantor.
Term:	The Servicing Guarantor's obligations under a Servicing Guarantee in respect of a Financing Entity will continue during the term of any obligation incurred by the Financing Entity that is or is intended to be secured by the Servicing Guarantee.
Satisfaction of a Servicing Guarantee:	The Servicing Guarantor will have the option to satisfy its obligations under a Servicing Guarantee by paying when due the amounts that would be remitted to the applicable Financing Entity ~~assuming that~~as if IESO and each electricity vendor had complied with its obligations under the Act and under any agreement under which the applicable Financing Entity acquires an investment interest from IESO and IESO undertakes on-going obligations in respect of such investment interest.
Approval Requirement:	The servicing obligations (including any amendments) to which the Servicing Guarantee relates, together with the provisions of any Servicing Guarantee itself, will be subject to the approval of the Minister of Energy and the Minister of Finance acting together.
Limits under Servicing Guarantee:	Under no circumstances shall the Servicing Guarantor be obligated to pay consequential, special or punitive damages, or for economic loss or loss of profits.

Indemnity	
Indemnitor:	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together, or an entity owned by the Province of Ontario whose indemnity obligations, as contemplated by this Term Sheet, are in turn unconditionally guaranteed by the Province of Ontario.
Indemnitees:	Each Financing Entity that owns an investment interest from time to time. A Financing Entity may grant a security interest over the Indemnity to specified creditors, including to an indenture trustee under a trust indenture on behalf of itself and other persons having debt or other claims against the Financing Entity secured under the trust indenture.
Indemnity of the Province:	The Indemnitor will indemnify each Indemnitee for its costs, expenses and losses reasonably incurred by the Indemnitee because of third party claims made against the Indemnitee by one or more of its specified creditors that result from any of the following: (A) the Legislative Assembly of Ontario repealing (and not replacing on an equivalent basis) the Act; (B) the Legislative Assembly of Ontario amending the Act or a Regulation made thereunder in a way that materially and adversely affects the rights and interests of the Financing Entity under its investment interest; or (C) a court of competent jurisdiction in a final and non-appealable judgement determines that all or a portion of the Act is *ultra vires* in a way that materially and adversely affects the rights and interests of the Financing Entity under its investment interest.
Term:	An Indemnity will continue during the term of any obligation incurred by a Financing Entity that is or is intended to be secured by the Indemnity.
Satisfaction of an Indemnity:	The Indemnitor will have the option to satisfy its obligations under an Indemnity in respect of a funding obligation by: (x) assuming and paying when due (without acceleration) the regularly scheduled amounts due and payable in respect of the funding obligation during the term and to the extent of the applicable Financing Entity's contractual obligations thereunder; or

	(y) causing the acceleration of the funding obligation and paying the outstanding amount owing thereunder in full, including in the case of debt instruments issued by the applicable Financing Entity by causing the redemption of the debt instruments and paying an amount equal to the then outstanding principal amount thereof plus accrued and unpaid interest up to the date of payment (without any default, penalty, prepayment or make whole premium).
Approval Requirement:	The terms and conditions of the obligations incurred by a Financing Entity that are secured or intended to be secured by an Indemnity, together with the provisions of any Indemnity itself, will be subject to the approval of the Minister of Energy and the Minister of Finance acting together.
Limits under Indemnity:	Under no circumstances shall the Indemnitor be obligated to indemnify any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.
Undertakings regarding Certain Mismatches	
Addressing Mismatches	If a Financing Entity proposes to incur one or more funding obligations that would require the Financing Entity to pay an aggregate amount during any reference period that would exceed the amount otherwise expected to be available to the Financing Entity during the reference period from its investment interests to pay such amounts (a "**Mismatch**"), the Financing Entity will, before incurring such funding obligations, undertake commercially reasonable efforts to arrange for commitments from highly creditworthy, market-based funding sources in accordance with the Financing Plan to enable it to satisfy its related payment obligations and thereby address any Mismatch.
Possible Undertaking to Fund Mismatches	If a Financing Entity is unable to arrange for commitments from one or more highly creditworthy, market-based funding sources in accordance with the Financing Plan to address a Mismatch on commercially reasonable terms and conditions, the Minister of Energy and the Minister of Finance acting together may undertake on behalf of the Province of Ontario to provide funding commitments to the extent necessary to provide the Financing Entity with required funding to address the Mismatch. Any such undertaking would be provided at or before the incurrence of the funding obligation that would otherwise result in the Mismatch and, if given, would be on such terms, including appropriate

	compensation to the Province of Ontario, and be subject to such conditions (for example and without limitation, funding being conditional on the occurrence of a market disruption that results in the non-availability of capital markets term funding to effect a refinancing of the funding obligation) as the Minister of Energy and the Minister of Finance determine are reasonable and appropriate in the circumstances. The decision to provide such an undertaking will be in the sole discretion of the Minister of Energy and the Minister of Finance.
Documentation	
Representations, Terms and Conditions:	Subject to approval of the Minister of Energy and the Minister of Finance acting together.
FIPPA:	Acknowledgement that the Servicing Guarantor and the Indemnitor will be bound by the *Freedom of Information and Protection of Privacy Act (Ontario)* and that any information provided to the Servicing Guarantor or the Indemnitor, or any agent or representative of the Servicing Guarantor or the Indemnitor, in connection with the transaction documents may be subject to disclosure in accordance with that act or as otherwise required by law.
Confidentiality Obligations:	Confidentiality obligations of each Financing Entity and its assignees, representatives and agents as may be determined to be appropriate by the Minister of Energy and the Minister of Finance acting together.
Governing Law:	Province of Ontario.

Document comparison by Workshare Compare on Friday, June 23, 2017 1:55:18 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23148306/7
Description	TOR_2528-#23148306-v7-Term_Sheet_-_Provincial_Support_Agreement_-_May_12
Document 2 ID	PowerDocs://TOR_2528/23148306/8
Description	TOR_2528-#23148306-v8-Term_Sheet_-_Provincial_Support_Agreement_-_May_12
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	5
Deletions	5
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	10

Provincial Protection and Assurances

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Ontario Fair Hydro Plan Act, 2017

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Servicing Guarantee:	Pursuant to a Servicing Guarantee, the Servicing Guarantor will guarantee the performance, or cause the performance, of the obligations of IESO as servicer under the Act and under any agreement under which the applicable Financing Entity acquires an investment interest from IESO and IESO undertakes on-going obligations in respect of such investment interest, including servicing obligations undertaken by IESO to enforce the performance by electricity vendors of their respective obligations under the Act. It is anticipated that such obligations will include matters related to the billing, collection and remittance of clean energy adjustments by IESO and electricity vendors, as the case may be, and regarding the commingling by IESO and electricity vendors of collections of clean energy adjustments with other amounts. In the event that the Servicing Guarantee is held to be unenforceable against the Servicing Guarantor, the Servicing Guarantee will contemplate, in the alternative, a functionally equivalent direct covenant of the Servicing Guarantor.
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Governing Law:	Province of Ontario.

From:	JACKSON, ADAM
To:	Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Gavaris, Hresa (OFA); Devine, James (OFA); Yep, Carlos (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); He, Gavin (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Hume, Steen (ENERGY); Cox, Hilary (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); "Susan.Thompson@tdsecurities.com"; McKinlay, Tom (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Hosick, Sarah (TBS); maharukh.hilloowala@TDSECURITIES.com
Cc:	Laing, Mark; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject:	RE: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes
Date:	June 23, 2017 10:16:31 AM

Thanks, Malle.

Kind regards,
Adam

Adam Jackson
adam.jackson@blakes.com
Dir: 416-863-4324

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, June 23, 2017 10:14 AM
To: ASHBOURNE, STEPHEN; Gavaris, Hresa (OFA); Devine, James (OFA); Yep, Carlos (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); He, Gavin (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA); Whitfield, Tobias P. (MOF); Hume, Steen (ENERGY); Cox, Hilary (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Susan.Thompson@tdsecurities.com'; McKinlay, Tom (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Hosick, Sarah (TBS); JACKSON, ADAM; maharukh.hilloowala@TDSECURITIES.com
Cc: Laing, Mark; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes

Hi Steve,

Thank you for the draft. OFA staff and MOF legal do not have any further comments on this draft.

Anna Strathy, OFA, will follow up directly with Energy on next steps.

Malle

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: June 22, 2017 6:27 PM
To: Gavaris, Hresa (OFA); Devine, James (OFA); Yep, Carlos (OFA); Kandeepan, Ken (OFA); Kwan, Ronald (OFA); He, Gavin (OFA); Mayman, Gadi (OFA); Strathy, Anna (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Hume, Steen (ENERGY); Cox, Hilary (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); 'Susan.Thompson@tdsecurities.com'; McKinlay, Tom (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Hosick, Sarah (TBS); JACKSON, ADAM; maharukh.hilloowala@TDSECURITIES.com
Cc: Laing, Mark; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes

Hi. Here is a revised version of the Term Sheet, including to reflect the comments discussed at our meeting this morning. Please pass on any final comments at your earliest opportunity. I will be travelling tomorrow, so please be sure to copy in my colleague, Adam Jackson (adam.jackson@blakes.com), in any response. Thanks very much, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

-----Original Appointment-----
From: Hresa Gavaris [mailto:Hresa.Gavaris@ofina.on.ca]
Sent: Wednesday, June 21, 2017 9:14 AM
To: Hresa Gavaris; James Devine; Carlos Yep; Ken Kandeepan; Ronald Kwan; Gavin He; Gadi Mayman; Anna Strathy; Malle Hanslep (MOF); Tobias P. Whitfield (MOF); ASHBOURNE, STEPHEN; Steen Hume (CAB); Hilary Cox (ENE); Carolyn Calwell (MCSS); 'Susan.Thompson@tdsecurities.com'; Tom McKinlay (MAG); Scott Nelms (ENERGY); 'cindy.veinot@ontario.ca'; 'sarah.hosick@ontario.ca'; JACKSON, ADAM
Cc: Laing, Mark
Subject: Provincial Support Agreement | Meeting with OFA, OPCD, Energy, TD and Blakes
When: Thursday, June 22, 2017 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Executive Boardroom, 14th Floor, 1 Dundas Street West

CM teleconference 416-406-5763 or 1-866-596-5280 p/c 9763326#

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RE_ PwC debrief on RFS_ When_ With michael_.rtf

From: Virani, Shyrose (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: PwC debrief on RFS? When? With michael?
Date: Tuesday, October 25, 2016 13:13:09

Michel Picard

From: Petsche, Nadine (TBS)
Sent: October 25, 2016 1:11 PM
To: Virani, Shyrose (TBS)
Subject: Re: PwC debrief on RFS? When? With michael?

Ok. Was the contact you advised Michael Hawtin?

From: Virani, Shyrose (TBS)

Sent: Tuesday, October 25, 2016 1:07 PM

To: Petsche, Nadine (TBS)

Subject: RE: PwC debrief on RFS? When? With michael?

no

From: Petsche, Nadine (TBS)
Sent: October 25, 2016 1:02 PM
To: Virani, Shyrose (TBS)
Subject: Re: PwC debrief on RFS? When? With michael?

Has PwC not requested one?

From: Virani, Shyrose (TBS)

Sent: Tuesday, October 25, 2016 12:52 PM

To: Petsche, Nadine (TBS)

Subject: RE: PwC debrief on RFS? When? With michael?

Debrief with Michel not Michael from KPMG on Nov 1st

From: Petsche, Nadine (TBS)
Sent: October 25, 2016 12:45 PM
To: Virani, Shyrose (TBS)
Subject: PwC debrief on RFS? When? With michael?

RE_ QA - 3rd Party Accounting .rtf

From: Hume, Steen (ENERGY) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
Subject: RE: QA - 3rd Party Accounting
Date: Wednesday, May 10, 2017 17:54:44

Hi. We also have edits going through our DMO/MO. Not comfortable with the tone in the response below, it too negative.

Also, I've asked my COMs folks to loop in with MOF and TB COM to make sure we don't have contradictory messaging on the legislation floating around.

Thanks,

From: Veinot, Cindy (TBS)
Sent: May-10-17 5:42 PM
To: Kim Marshall; Hume, Steen (ENERGY)
Cc: Petsche, Nadine (TBS)
Subject: Re: QA - 3rd Party Accounting

We have suggested edits to remove all firm names.

Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Veinot, Cindy (TBS)

Sent: Wednesday, May 10, 2017 5:37 PM

To: Kim Marshall; Hume, Steen (ENERGY)

Cc: Petsche, Nadine (TBS)

Subject: Re: QA - 3rd Party Accounting

This is not a press release but a Q&A to be ready in the event of questions.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Kim Marshall

Sent: Wednesday, May 10, 2017 5:15 PM

To: Veinot, Cindy (TBS); Hume, Steen (ENERGY)

Subject: Fwd: QA - 3rd Party Accounting

Q

Fyi this is a km not press release?

Sent from my iPad

Begin forwarded message:

> **From:** "Picard, Michel" <mpicard@kpmg.ca>
> **Date:** May 10, 2017 at 5:13:39 PM EDT
> **To:** Kim Marshall <Kim.Marshall@ieso.ca>
> **Subject: Re: QA - 3rd Party Accounting**
>
> Understood but KPMG should not be named in their press releases!
>
> Sent from my iPhone
>
> On May 10, 2017, at 13:27, Kim Marshall <Kim.Marshall@ieso.ca<mailto:Kim.Marshall@ieso.ca>> wrote:

KPMG will be named, understood?

Sent from my iPad

Begin forwarded message:

From: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>
Date: May 10, 2017 at 4:24:40 PM EDT
To: "Graham, Helen (TBS)" <Helen.Graham@ontario.ca<mailto:Helen.Graham@ontario.ca>>, "Patel, Bharat (TBS)" <Bharat.Patel3@ontario.ca<mailto:Bharat.Patel3@ontario.ca>>, "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca<mailto:Nadine.Petsche@ontario.ca>>
Cc: "Hume, Steen (ENERGY)" <Steen.Hume@ontario.ca<mailto:Steen.Hume@ontario.ca>>, CPA CA Ken Hartwick <ken.hartwick@opg.com<mailto:ken.hartwick@opg.com>>, Kimberly Marshall <kim.marshall@ieso.ca<mailto:kim.marshall@ieso.ca>>, "Jack, Shannon (TBS)" <Shannon.Jack@ontario.ca<mailto:Shannon.Jack@ontario.ca>>
Subject: Re: QA - 3rd Party Accounting

Steen, Ken and Kim,

MOF Comms has sent the Q& A below to us for review. It needs to be edited, but I wanted to confirm if the firm's have agreed to be named. Please advise asap

Nadine - same question for you re our EY advisors. Also, can you edit the response please.

Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Graham, Helen (TBS)
Sent: Wednesday, May 10, 2017 3:45 PM
To: Patel, Bharat (TBS); Petsche, Nadine (TBS); Veinot, Cindy (TBS)
Subject: RE: QA - 3rd Party Accounting

Copying in Cindy

From: Patel, Bharat (TBS)
Sent: May 10, 2017 3:44 PM
To: Petsche, Nadine (TBS); Graham, Helen (TBS)
Subject: FW: QA - 3rd Party Accounting

Importance: High

Pleas advise.

Sent with BlackBerry Work
(https://na01.safelinks.protection.outlook.com/?url=www.blackberry.com&data=01%7C01%7Ckim.marshall%40ieso.ca%7Ce9c8b28da3ab444483d608d497e2a0ee%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=g%2FmpXu%2BfATJgSDepmvTWTcqQpvEXPYtdFCcNDQuqLHs%3D&reserved=0<https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.blackberry.com&data=01%7C01%7Ckim.marshall%40ieso.ca%7Ce9c8b28da3ab444483d608d497e2a0ee%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=WE6Lt7RrqFWz2smSm24X5r9shY5LxItvSRmkKQ8JwtY%3D&reserved=0><https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dwww.blackberry.com-26data-3D01-257C01-257Ckim.marshall-2540ieso.ca-257Ce9c8b28da3ab444483d608d497e2a0ee-257C7cd55abd63f243c58f4bd38ea458add8-257C0-26sdata-3Dg-252FmpXu-252BfATJgSDepmvTWTcqQpvEXPYtdFCcNDQuqLHs-253D-26reserved-3D0-253Chttps-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.blackberry.com-26data-3D01-257C01-257Ckim.marshall-2540ieso.ca-257Ce9c8b28da3ab444483d608d497e2a0ee-257C7cd55abd63f243c58f4bd38ea458add8-257C0-26sdata-3DWE6Lt7RrqFWz2smSm24X5r9shY5LxItvSRmkKQ8JwtY-253D-26reserved-3D0-253E%26d%3DDwMGaQ%26c%3D0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80%26r%3DDAOe89GuHpPZrONj_IODmw%26m%3Dt4novDiPSwwGWv1dncc9oKda3NBe5Im0XVmYqkGgpTY%26s%3DrtvDg6UF0nnpGkfVyGsHSD-tDg14OmexPN_tDtGnSX0%26e&data=01%7C01%7Ckim.marshall%40ieso.ca%7C250e62de62024eb55ff708d497e97102%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=Yxy5AJmE6td8B%2B8fYtdWsEFsWnZ2b0oRMLO8nhIySjQ%3D&reserved=0=>)
From: Hsu, Priscilla (MOF)
<Priscilla.Hsu@ontario.ca<mailto:Priscilla.Hsu@ontario.ca><mailto:Priscilla.Hsu@ontario.ca>>
Date: Wednesday, May 10, 2017, 3:36 PM
To: Patel, Bharat (TBS)
<Bharat.Patel3@ontario.ca<mailto:Bharat.Patel3@ontario.ca><mailto:Bharat.Patel3@ontario.ca>>
Subject: QA - 3rd Party Accounting

Hi Bharat,

I’ve been working with Deena on the media QA for the OFHP. The DMO/MO are looking to have high level KMs for the below Q and I understand there are some concerns from the policy end. They are looking to get these QAs as soon as possible – can you please give me a call so I can better understand some of the concerns to work out an answer that works for everyone?

Thank you in advance.
Cheers,
Priscilla

Q. Does third party accounting opinion support the Global Adjustment deferral plan?

Yes. The proposed legislation was reviewed by government agencies involved and their accounting firms, and conditionally supports the accounting structure.

[If pressed]

Input was provided by the Independent Electricity Sector Operator and its accounting firm KPMG, Ontario Power Generation and its accounting firm Ernst & Young, and the Ontario Provincial Controller Division and its external accounting consultants at Ernst & Young.

Many specifics remain outstanding and will only be addressed through future regulations and commercial agreements, which is why the accounting firms conditionally support the accounting structure.

Priscilla Hsu
Senior Communications Advisor
Ministry of Finance | Communications Services Branch
Priscilla.Hsu@ontario.ca<mailto:Priscilla.Hsu@ontario.ca><mailto:Priscilla.Hsu@ontario.ca> | 416.325.1309

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ question (_).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: question (***)
Date: Thursday, February 16, 2017 12:15:53

I have no idea what unconstitutional tax or Eurig is but collection is the key. Without the ability to collect, the deferred could not continue to be recognized.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, February 16, 2017 11:05 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: question (***)
Importance: High

Michel,

Cindy has asked me to enquire/confirm the accounting treatment for the deferred amount in the event that a portion of the deferred amount might be assessed as being an 'unconstitutional tax' under Eurig.

I thought that it should not have an impact, as long as the total deferred amount would be recovered through future rates, the fiscal impact should be as envisioned?

Thanks in advance.

Nadine

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

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- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ Request for feedback (time sensitive).rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: Request for feedback (time sensitive)
Date: Wednesday, April 12, 2017 09:47:28
Attachment 1: image001.gif

Hi Nadine:

We are looking at the document and have had a high level discussion of possible issues and wondering if you have time for a call to give you our initial thoughts at 1pm today?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

Proudly serving Canada for over 150 years

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, April 11, 2017 1:23 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>

Subject: Request for feedback (time sensitive)
Importance: High

Suzie/Blake/LeeAnne,

Further to our discussion on Friday, we have received the updated draft Legislation for the Fair Hydro Act. It will continue to evolve, but is on a tight timeline, so we would appreciate your feedback on the currently envisioned model and any potential accounting risks from your perspective.

An important regroup of key stakeholders is planned for tomorrow afternoon, so if we can get your comments (concerns mainly) by tomorrow am it would be greatly appreciated.

Please direct your comments to both Cindy and myself.

Thanks.

Nadine

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image001.pdf

RE_ Revised Declaration of Trust.rtf

From: Syed, Usman (ENERGY) []
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: Revised Declaration of Trust
Date: Tuesday, March 21, 2017 10:19:27
Attachment 1: image001.gif

Hi Steve – Computershare is available throughout the day for a walkthrough of the documents, can you please advise of your preferred time(s) and we will arrange for the meeting? Thanks…

- Usman

From: Syed, Usman (ENERGY)
Sent: March 20, 2017 5:30 PM
To: 'ASHBOURNE, STEPHEN'; Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Petsche, Nadine (TBS)
Cc: PRESTAGE, JA; VINER, JON
Subject: RE: Revised Declaration of Trust

Great, thanks…

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 20, 2017 5:27 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: PRESTAGE, JA; VINER, JON
Subject: RE: Revised Declaration of Trust

TPA revised and attached (same caveat as below). Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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From: ASHBOURNE, STEPHEN
Sent: Monday, March 20, 2017 4:50 PM
To: 'Paul.Johnson3@ontario.ca'; 'David.Ranalli@ontario.ca'; 'Michelle.Schachtschneider@ontario.ca'; 'Musab.Qureshi@ontario.ca'; 'Emma.Schwab-Pflug@ontario.ca'; 'Usman.Syed@ontario.ca'; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; VINER, JON
Subject: RE: Revised Declaration of Trust

Hi again. In the interest of time, I suggest that the attached clean version of the Declaration be forwarded to Computershare. The attached blackline (not for Computershare) shows how we have tried to address the comments received this afternoon, but admittedly, there are several open items that will need to be further discussed (particularly from Nadine's most recent mark-up). I don't think we need to wait for the TPA at this point, although we will get that one around as soon as we can. Please let us know if a call would be useful, if anyone agrees with the suggested approach. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: ASHBOURNE, STEPHEN
Sent: Monday, March 20, 2017 1:02 PM
To: 'Paul.Johnson3@ontario.ca'; 'David.Ranalli@ontario.ca'; 'Michelle.Schachtschneider@ontario.ca'; 'Musab.Qureshi@ontario.ca'; 'Emma.Schwab-Pflug@ontario.ca'; 'Usman.Syed@ontario.ca'; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Declaration of Trust Feedback

Please see the updated versions of the Documents, attached. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

> **From:** "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
> **To:** "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
> **Cc:** "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
> **Subject: Fw: TPA and Deed Feedback**
>
> Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image001.pdf

Blakes

RE_ Revised Declaration of Trust.rtf

From: Syed, Usman (ENERGY) []
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
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Cc: PRESTAGE, JA; VINER, JON
Subject: RE: Revised Declaration of Trust

Great, thanks…

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Sent: March 20, 2017 5:27 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: PRESTAGE, JA; VINER, JON
Subject: RE: Revised Declaration of Trust

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Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: ASHBOURNE, STEPHEN
Sent: Monday, March 20, 2017 1:02 PM
To: 'Paul.Johnson3@ontario.ca'; 'David.Ranalli@ontario.ca'; 'Michelle.Schachtschneider@ontario.ca'; 'Musab.Qureshi@ontario.ca'; 'Emma.Schwab-Pflug@ontario.ca'; 'Usman.Syed@ontario.ca'; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Declaration of Trust Feedback

Please see the updated versions of the Documents, attached. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

> **From:** "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
> **To:** "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
> **Cc:** "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
> **Subject: Fw: TPA and Deed Feedback**
>
> Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image001.pdf

Blakes

RE_ RFS Complex Accounting Services - update.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: RFS Complex Accounting Services - update
Date: Tuesday, September 27, 2016 14:16:49

Thanks a million for the info.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Tuesday, September 27, 2016 1:55 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RFS Complex Accounting Services - update

Hi

Just wanted to update you that the decision will be made soon.

Thanks for your patience.

Shyrose Virani

From: Virani, Shyrose (TBS)
Sent: July 25, 2016 10:40 AM
To: 'mpicard@kpmg.ca'
Subject: RFS Complex Accounting Services

Hello:

Attached, please find a Request for Proposal for Complex Accounting Services at the Treasury Board Secretariat, Office of the Provincial Controller Division.

The submission deadline is August 15, 2016.

Please feel free to contact me if you have any questions.

Kindly acknowledge receipt of this email and send your submission directly to me.

Thank you.

Shyrose Virani

Administrative Coordinator

416-325-1448

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RE_ RFS Complex Accounting Services.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; cfossay@kpmg.ca [cfossay@kpmg.ca]
Subject: RE: RFS Complex Accounting Services
Date: Thursday, April 27, 2017 09:09:32

Thanks Shyrose. This is welcome As I have to issue a draft report to IESO and OPCD on the Fair Hydro Plan Act by Monday!

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Thursday, April 27, 2017 9:07 AM
To: cfossay@kpmg.ca
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: RFS Complex Accounting Services

Hi

We wish to advise you that we have extended the deadline to submit the proposal. The new deadline is **May 5, 2017**.

Thank you
Shyrose Virani

From: Virani, Shyrose (TBS)
Sent: April 11, 2017 12:00 PM
To: cfossay@kpmg.ca
Cc: 'mpicard@kpmg.ca'
Subject: RFS Complex Accounting Services

Hello:

Attached, please find a Request for Proposal for Complex Accounting Services related to Electricity Sector Entities at the Treasury Board Secretariat, Office of the Provincial Controller Division.

The submission deadline is **April 28, 2017.**

Please feel free to contact me if you have any questions.

Kindly acknowledge receipt of this email and send your submission directly to me.

Thank you.

Shyrose Virani

Administrative Coordinator

416-325-1448

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RE_ RM_Potential Structure Feb 13.pptx.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim.Marshall@ieso.ca [Kim.Marshall@ieso.ca]; 'CHENG Alec -FIN & C CTRL' [alec.cheng@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: RM_Potential Structure – Feb 13.pptx
Date: Monday, February 13, 2017 19:34:47

You need to add the power consumers (mining companies, smelters, forestry etc.) below LDCs.

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Monday, February 13, 2017 4:29 PM
To: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>; Picard, Michel <mpicard@kpmg.ca>; Kim.Marshall@ieso.ca; 'CHENG Alec -FIN & C CTRL' <alec.cheng@opg.com>; MAUTI John -FIN & C CTRL <john.mauti@opg.com>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: RM_Potential Structure – Feb 13.pptx

Hi all,

Attached is a diagram that I believe reflects our discussion from earlier today. Please take a look and determine if you think there are edits that need to be made. I'd like to ensure we are all focused on the same structure.

Thanks,

Cindy

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RE_ RRA.rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall [Kim.Marshall@ieso.ca]
CC: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: RRA
Date: Friday, June 09, 2017 08:52:33

Thanks Kim.

I've sent a revised invite. Hoping that all will be available at this time. Happy Friday!
Nadine

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: June-09-17 8:45 AM
To: Petsche, Nadine (TBS)
Cc: Picard, Michel (mpicard@kpmg.ca); Virani, Shyrose (TBS)
Subject: Re: RRA

Any chance we could move this to the afternoon of the 15th

Sent from my iPad

On Jun 8, 2017, at 12:29 PM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:

> Michel/Kim,
>
> Based on a recent call with E&Y (our external advisors), we would like to schedule a short call to provide additional background and details to help E&Y understand the IESO's market related activities and adoption of RRA.
>
> Michel's expertise w.r.t. RRA will be valuable in helping E&Y to understand the interpretation and application of GAAP w.r.t. regulator independence as well. Hope that the proposed time works with your schedule.
>
> Thanks in advance.
>
> Nadine

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Re_ RRA.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Re: RRA
Date: Friday, June 09, 2017 08:44:37

Any chance we could move this to the afternoon of the 15th

Sent from my iPad

On Jun 8, 2017, at 12:29 PM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:

> Michel/Kim,
>
> Based on a recent call with E&Y (our external advisors), we would like to schedule a short call to provide additional background and details to help E&Y understand the IESO's market related activities and adoption of RRA.
>
> Michel's expertise w.r.t. RRA will be valuable in helping E&Y to understand the interpretation and application of GAAP w.r.t. regulator independence as well. Hope that the proposed time works with your schedule.
>
> Thanks in advance.
>
> Nadine

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From: Schroer, Maree
To: Virani, Shyrose (TBS)
Subject: RE: Security Clearance - Complex Accounting Services related to Electricity Sector Entities
Date: June 28, 2017 4:21:45 PM

Hi Shyrose, I am all over people to get the applications done. I have heard from Michel Picard that he needs his link resent. You can only click on it once and he wasn't ready, so it's now inactive. Would you be kind enough to resend it to him? Many thanks, M

Maree Schroer

Proposal Coordinator, Management Consulting, GTA

KPMG MSLP

333 Bay Street, Suite 4600
Toronto, Ontario M5H 2S5
T 416 777 8522
F 416 777 8462
mschroer@kpmg.ca

Twitter | LinkedIn | YouTube | SlideShare

From: Schroer, Maree
Sent: Tuesday, June 27, 2017 1:35 PM
To: 'Shyrose.Virani@ontario.ca' <Shyrose.Virani@ontario.ca>
Subject: Security Clearance - Complex Accounting Services related to Electricity Sector Entities

Good afternoon Shyrose,

I am the KPMG CSO for the Government of Ontario security program. I will be working with you to get the team members cleared. Please find below the information that is required to open their Triton application. The team members will be provided the information that they will need to get completed it and will be prepared when they receive the link

Name	Email	Telephone
Michel Picard	mpicard@kpmg.ca	416-777-8414
Bailey Church	bchurch@kpmg.ca	613-212-3698
Andrew Newman	andrewnewman@kpmg.ca	613-212-2877
Janet Allan	jlallan@kpmg.ca	905-687-3275
Louis Ouellette	louellette@kpmg.ca	905-687-3276
Jeremy De Stefanis	jmdestefanis@kpmg.ca	647-777-5488
Alexandra Duret	aduret@kpmg.ca	613-212-3759
Dennis Weatherdon	dweatherdon@kpmg.ca	613-350-1254
Clever Ngorima	cngorima@kpmg.ca	416-777-3639

Please don't hesitate to ask if you need anything else.

Regards, M

Maree Schroer

Proposal Coordinator, Management Consulting, GTA

KPMG MSLP

333 Bay Street, Suite 4600
Toronto, Ontario M5H 2S5
T 416 777 8522
F 416 777 8462
mschroer@kpmg.ca

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RE_ Security Clearance - Triton.rtf

From: Ngorima, Clever [cngorima@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Security Clearance - Triton
Date: Tuesday, June 27, 2017 09:25:50

Yes, it is a Government of Canada Security Screening Certificate that has a file number.

Regards,

Clever Ngorima

Accounting Advisory Services

T 416 777 3639

cngorima@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Tuesday, June 27, 2017 8:18 AM
To: Ngorima, Clever <cngorima@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Security Clearance - Triton

Do you have a clearance number?

From: Ngorima, Clever [mailto:cngorima@kpmg.ca]
Sent: June 26, 2017 11:19 PM
To: Virani, Shyrose (TBS)
Cc: Picard, Michel
Subject: RE: Security Clearance - Triton

Hi Shyrose,

I currently have the security clearance as set out below. Please confirm if I still need to obtain the clearance that you have indicated in the email below:

- Validity period: Nov 23, 2016 to Nov 23, 2026
- Status: Reliability Status

Regards,

Clever Ngorima

Accounting Advisory Services

T 416 777 3639

cngorima@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, June 21, 2017 11:25 AM
To: Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>
Subject: Security Clearance - Triton

Hi

Michel Picard has provided me with your names indicating that you will be working on our files for Complex Accounting Services related to Electricity Sector Entities, prior to you starting with our files, we need you to complete the security check. Triton Company will be getting in touch with you, please provide all necessary personal information. If you have any additional questions, please do not hesitate to contact me at 416 325 1448.

Thanks

Shyrose Virani

Administrative Coordinator

Treasury Board Secretariat

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RE_ Security Clearance - Triton.rtf

From: Virani, Shyrose (TBS) []
To: Ngorima, Clever [cngorima@kpmg.ca]
Subject: RE: Security Clearance - Triton
Date: Tuesday, June 27, 2017 09:28:52

Can I have that number?

From: Ngorima, Clever [mailto:cngorima@kpmg.ca]
Sent: June 27, 2017 9:26 AM
To: Virani, Shyrose (TBS)
Cc: Picard, Michel
Subject: RE: Security Clearance - Triton

Yes, it is a Government of Canada Security Screening Certificate that has a file number.

Regards,

Clever Ngorima

Accounting Advisory Services

T 416 777 3639

cngorima@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Tuesday, June 27, 2017 8:18 AM
To: Ngorima, Clever <cngorima@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Security Clearance - Triton

Do you have a clearance number?

From: Ngorima, Clever [mailto:cngorima@kpmg.ca]

Sent: June 26, 2017 11:19 PM
To: Virani, Shyrose (TBS)
Cc: Picard, Michel
Subject: RE: Security Clearance - Triton

Hi Shyrose,

I currently have the security clearance as set out below. Please confirm if I still need to obtain the clearance that you have indicated in the email below:

- Validity period: Nov 23, 2016 to Nov 23, 2026

- Status: Reliability Status

Regards,

Clever Ngorima

Accounting Advisory Services

T 416 777 3639

cngorima@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, June 21, 2017 11:25 AM
To: Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>
Subject: Security Clearance - Triton

Hi

Michel Picard has provided me with your names indicating that you will be working on our files for Complex Accounting Services related to Electricity Sector Entities, prior to you starting with our files, we need you to complete the security check. Triton Company will be getting in touch with you, please provide all necessary personal

information. If you have any additional questions, please do not hesitate to contact me at 416 325 1448.

Thanks

Shyrose Virani

Administrative Coordinator

Treasury Board Secretariat

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the link into your browser.

RE_ Security Clearance - Triton.rtf

From: Ngorima, Clever [cngorima@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Security Clearance - Triton
Date: Monday, June 26, 2017 23:19:27

Hi Shyrose,

I currently have the security clearance as set out below. Please confirm if I still need to obtain the clearance that you have indicated in the email below:

· Validity period: Nov 23, 2016 to Nov 23, 2026

· Status: Reliability Status

Regards,

Clever Ngorima

Accounting Advisory Services

T 416 777 3639

cngorima@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, June 21, 2017 11:25 AM
To: Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>
Subject: Security Clearance - Triton

Hi

Michel Picard has provided me with your names indicating that you will be working on our files for Complex Accounting Services related to Electricity Sector Entities, prior to you starting with our files, we need you to complete the security check. Triton Company will be getting in touch with you, please provide all necessary personal information. If you have any additional questions, please do not hesitate to contact me

at 416 325 1448.

Thanks

Shyrose Virani

Administrative Coordinator

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RE_ Security Clearance - Triton.rtf

From: Virani, Shyrose (TBS) []
To: Ngorima, Clever [cngorima@kpmg.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Security Clearance - Triton
Date: Tuesday, June 27, 2017 08:18:06

Do you have a clearance number?

From: Ngorima, Clever [mailto:cngorima@kpmg.ca]
Sent: June 26, 2017 11:19 PM
To: Virani, Shyrose (TBS)
Cc: Picard, Michel
Subject: RE: Security Clearance - Triton

Hi Shyrose,

I currently have the security clearance as set out below. Please confirm if I still need to obtain the clearance that you have indicated in the email below:

· Validity period: Nov 23, 2016 to Nov 23, 2026

· Status: Reliability Status

Regards,

Clever Ngorima

Accounting Advisory Services

T 416 777 3639

cngorima@kpmg.ca

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, June 21, 2017 11:25 AM
To: Ouellette, Lois A <louellette@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>; Ngorima, Clever <cngorima@kpmg.ca>; Duret, Ali <aduret@kpmg.ca>; Weatherdon, Dennis L <dweatherdon@kpmg.ca>

Subject: Security Clearance - Triton

Hi

Michel Picard has provided me with your names indicating that you will be working on our files for Complex Accounting Services related to Electricity Sector Entities, prior to you starting with our files, we need you to complete the security check. Triton Company will be getting in touch with you, please provide all necessary personal information. If you have any additional questions, please do not hesitate to contact me at 416 325 1448.

Thanks

Shyrose Virani

Administrative Coordinator

Treasury Board Secretariat

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- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ security screenings.rtf

From: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Grindley, Clair (CA - Toronto) [clgrindley@deloitte.ca]; Gary, Trevor (CA - Toronto) [tgary@deloitte.ca]
CC: Warburton, Cara (CA - Toronto) [cawarburton@deloitte.ca]
Subject: RE: security screenings
Date: Monday, January 30, 2017 15:26:00

Shyrose, I have already paid for this screening. So as far as I am concerned it should be done. I have an invoice from Triton from November 16.

--

Kerry Danyluk

Partner | National Accounting and Assurance

D: +1 (416) 775 7183

kdanyluk@deloitte.ca | deloitte.ca

--

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Please consider the environment before printing.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, January 30, 2017 2:18 PM
To: Grindley, Clair (CA - Toronto) <clgrindley@deloitte.ca>; Gary, Trevor (CA - Toronto) <tgary@deloitte.ca>; Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Cc: Warburton, Cara (CA - Toronto) <cawarburton@deloitte.ca>
Subject: security screenings

Triton will get in touch with you regarding security screening, please provide the necessary information.

Thanks

shyrose

Confidentiality Warning:

This message and any attachments are intended only for the use of the intended recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank You

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RE_ security screenings.rtf

From: Virani, Shyrose (TBS) []
To: Warburton, Cara (CA - Toronto) [cawarburton@deloitte.ca]
Subject: RE: security screenings
Date: Monday, November 14, 2016 16:45:16
Attachment 1: image001.png

Hi Cara

I had sent to the following people

Kerry Danyluk

Clair Grindley

Gary Trevor

Pls let me know if you have C numbers for the above

Thanks

s

From: Warburton, Cara (CA - Toronto) [mailto:cawarburton@deloitte.ca]
Sent: November 11, 2016 10:51 AM
To: Virani, Shyrose (TBS)
Cc: Bazile, Max (CA - Toronto)
Subject: RE: security screenings

Hi Shyrose

Max timed out on his Trion application, please can you reissue it.

Thanks

Cara

--

Cara Warburton

Senior Manager | Company Security Officer

22 Adelaide Street West, Suite 200, Toronto, ON, M5H 0A9, Canada

D: (416) 601 5763 | M: (647) 300 9400

--

Please consider the environment before printing.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Sunday, October 23, 2016 2:24 PM
To: Gary, Trevor (CA - Toronto) <tgary@deloitte.ca>; Bazile, Max (CA - Toronto) <mbazile@deloitte.ca>; Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>; cgrindley@deloitte.ca; Raymond, Martin (CA - Montreal) <maraymond@deloitte.ca>
Cc: Warburton, Cara (CA - Toronto) <cawarburton@deloitte.ca>
Subject: security screenings

Hi

I just need to find out if you have screened for the security check, if so, can I please have your Security C number, if not, Triton will be in touch with you.

Thanks

Shyrose Virani

Confidentiality Warning:

This message and any attachments are intended only for the use of the intended recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank You

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RE_ SoW and Master Agreement - EY.rtf

From: Virani, Shyrose (TBS) []
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: SoW and Master Agreement - EY
Date: Thursday, October 11, 2018 14:50:46
Attachment 1: 14 offer letter and SOW.pdf
Attachment 2: 20 Master Agreement.pdf

From: Hosick, Sarah (TBS)
Sent: October 11, 2018 12:53 PM
To: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: SoW and Master Agreement - EY

Hi Shyrose,

Can you please send me the Statement of Work dated October 31, 2016, and Master Agreement dated June 16, 2014 both with EY? I believe it would be called Complex Accounting. (Suzie Gignac and Blake Langill)

Thanks

Sarah

14 offer letter and SOW.pdf

14

Virani, Shyrose (TBS)

From: Virani, Shyrose (TBS)
Sent: October 21, 2016 3:55 PM
To: anna.pesme@ca.ey.com
Cc: ivan.chittenden@ca.ey.com
Subject: RE: RFS Complex Accounting Services

The Ministry is pleased to advise that you are the selected proponent pursuant to the above-noted procurement process. We will send you SOW sometime next week.

Thank you
Shyrose Virani

From: Virani, Shyrose (TBS)
Sent: July 25, 2016 10:32 AM
To: anna.pesme@ca.ey.com
Cc: ivan.chittenden@ca.ey.com
Subject: RFS Complex Accounting Services

Ms. Anna Pesme:

Attached, please find a Request for Proposal for Complex Accounting Services at the Treasury Board Secretariat, Office of the Provincial Controller Division.

The submission deadline is August 15, 2016.

Please feel free to contact me if you have any questions.

Kindly acknowledge receipt of this email and send your submission directly to me.

Thank you.

Shyrose Virani
Administrative Coordinator
416-325-1448

Virani, Shyrose (TBS)

From: Virani, Shyrose (TBS)
Sent: October 31, 2016 1:37 PM
To: 'anna.pesme@ca.ey.com'
Cc: ivan.chittenden@ca.ey.com
Subject: RFS-TBS-OTB-OPCD-16
Attachments: Scanned from a Xerox multifunction device.pdf; confidentiality agreement.doc; tax declaration form.docx

Attached, please find covering letter and an SOW. Kindly have an SOW signed and email it today if possible. Under separate cover I will be mailing you original SOW, kindly sign and return by mail.

Also, I am attaching confidential agreement form to be signed by: Ivan Chittenden, Lee Ann Probert, Daniel Mortimer, Black Langill and Suzie Gignac. Kindly have them sign and return it to me.

Included is also a Tax Declaration form which needs to be signed and sent to me.

If you have any questions, please do not hesitate to call me at 416 325 1448.

Thanking you
Shyrose Virani

Treasury Board Secretariat

Office of the Treasury Board
Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Tel. (416) 325-8027

Secrétariat du Conseil du Trésor

Bureau du Conseil du Trésor
Bureau du contrôleur provincial
Direction de la méthode comptable et des rapports financiers
Édifice Frost Sud, 2e étage
7 Queen's Park Cr.
Toronto ON M7A 1Y7
Téléphone: 416-325-8027

Ontario

October 31, 2016

Ms. Anna Pesme
Ernst & Young LLP
222 Bay Street
Toronto ON
M5K 1J7

Ms. Pesme

RE: RFS-TBS-OTB-OPCD-16

The Ministry is pleased to advise that you are the selected proponent pursuant to the above-noted procurement process.

Enclosed please find two (2) copies of the Agreement for your signature. Please return one copy of the executed Agreement within ten (10) business days of receipt of this notice:

Please be advised that this notice of selection letter should not be construed as permission from the Ministry to begin the work detailed in the Agreement. The Ministry will not be responsible or liable for any expenses related to the Deliverables, and the selected proponent is not to accept work requests prior to the execution of the Agreement by the Ministry. Work may begin pursuant to the Agreement when:

(a) the Agreement signed by both parties is returned to the selected proponent, and

(b) written permission is expressly given to the Supplier by the Ministry Representative to begin work under the Agreement.

.../2

If you have any questions concerning this process, please feel free to contact me at 416-325-8027.

Sincerely,

N. Petsche

Nadine Petsche
Director, Accounting Policy and Financial Reporting Branch
Office of the Provincial Controller Division

FORM OF STATEMENT OF WORK – OPS ENTITY

Statement of Work for Management Consulting Services

This Statement of Work no. – **RFS TBS-OTB-OPCD-16 made in duplicate and effective October 31, 2016 ending on February 10, 2018 with a 6 month extension option in favour of the ministry with no increase in ceiling price.**

Ernst & Young LLP (the "Vendor" or "Ernst & Young") and Her Majesty the Queen in right of Ontario as represented by the President of the Treasury Board (the "Client") enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement").

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$ 450,000.00 does not include HST

4. *Project Start Date:* October 31, 2016

5. *Project End Date:* February 10, 2018 (with a 6 month extension option)

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following

    - Advice on complex accounting issues and accounting for complex financing transactions;
    - Capital investment, joint ventures and private-public partnerships
    - Proposed government acquisitions and divestments;
    - Providing expert advice on specialized issues such as the implications of changes in public sector accounting standards and the interpretation and

application of those standards in an increasingly complex regulatory framework; and

- Implications of accounting decisions on the Province's financial reports, budgets and appropriations.

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* - The structure of Ernst & Young's working relationship with OPCD is vital to the success of their engagement. The Project Lead that will handle OPCD work is Ivan Chittenden (partner). Ernst & Young's communication strategy will be centred on periodic project update meetings, the frequency of which will be determined by the OPCD and Ernst & Young.

9. *Work Location* - All meetings will be within Greater Toronto Area.

10. *Working Hours* – The Client's normal working hours are 7.25 hours per day, between 8:15 a.m. to 4:30 p.m. Monday to Friday inclusive.

    If required by the Client, the Vendor must provide Services outside of the normal working hours and/or on non-Business days. The Vendor will not be entitled to charge more than the Fixed Price or Per Diem Rate.

11. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

12. *Billing and Payment Process* – The Vendor shall provide the Client with quarterly billing statements that outline the per diem charges no later than 10 Business Days after the end of each quarter.

    Billing statements should include all billing information as set out in the Master Agreement.

13. *Names and Roles of Vendor's Personnel:*

Name of Individual	*Level*
Ivan Chittenden	*Partner*
Lee Ann Probert	*Senior Manager*
Daniel Mortimer	*Manager*
Black Langill	*Partner*
Suzie Gignac	*Partner*

Ivan Chittenden will be supported by Suzie Gignac, Lee Anne Probert, Daniel Mortimer and Blake Langill and other staff as required, depending on the nature of advisory services request, Please note all individuals mentioned above have to sign the confidentiality agreement form and go through security requirements. Any staff who are subsequently assigned to this SOW will be subject to the same procedures.

14. **Invoices** - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client:	Treasury Board Secretariat, Office of the Provincial Controller Division
Branch:	Accounting Policy and Financial Reporting
Representative:	Nadine Petsche
Title:	Director, Accounting Policy and Financial Reporting
Phone number:	416-325-8027
Email:	Nadine.petsche@ontario.ca

15. *Knowledge Transfer:* The Vendor will work closely with the Client to ensure knowledge transfer to the Client's designated staff, and as necessary with the Auditor General.

16. *Destruction of Information* - The Vendor shall destroy all information contained on any media that was provided by the Client or at the direction of the Client, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

17. *Indemnity* – the indemnity set out in the Master Agreement applies to this assignment.

18. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	**Treasury Board Secretariat**
Client Representative:	**Nadine Petsche**
Telephone number:	**416-325-8027**
E-mail:	**Nadine.petsche@ontario.ca**

19. *Vendor Representative and Receipt of Notices*

The name and title of the Vendor's Representative:
Ivan Chittenden
222 Bay Street Toronto ON
M5K 1J7

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

Her Majesty the Queen in right of Ontario as represented by The President of the Treasury Board

Per:

Signature: N. Petsche

Name: Nadine Petsche

Title: Director, Accounting Policy & Financial Reporting

Pursuant to delegated authority.

ERNST & YOUNG LLP.

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

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Black Langill	*Partner*
Suzie Gignac	*Partner*

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Title:	Director, Accounting Policy and Financial Reporting
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Email:	Nadine.petsche@ontario.ca

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Ivan Chittenden
222 Bay Street Toronto ON
M5K 1J7

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

Her Majesty the Queen in right of Ontario as represented by The President of the Treasury Board

Per:

Signature: N. Petsche

Name: Nadine Petsche

Title: Director, Accounting Policy & Financial Reporting

Pursuant to delegated authority.

ERNST & YOUNG LLP.

Per:

Signature: S Gignac

Name: SUZIE GIGNAC

Title: PARTNER

I have the authority to bind the Vendor.

20 Master Agreement.pdf

MASTER AGREEMENT
FOR MANAGEMENT CONSULTING SERVICES
June 16, 2014

HER MAJESTY THE QUEEN in right of Ontario

as represented by the Minister of Government Services

AND:

«Proponent_Name»

(referred to as the “Vendor”)

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THIS MASTER AGREEMENT FOR MANAGEMENT CONSULTING SERVICES is made in duplicate as of June 16, 2014.

BETWEEN:

HER MAJESTY THE QUEEN in right of Ontario
as represented by the Minister of Government Services

AND:

«Proponent_Name»

(referred to as the "Vendor")

In consideration of their respective agreements set out below, the parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions

In this Master Agreement and in each Statement of Work, these words and expressions have these meanings:

"**Attachment**" means an attachment to this Master Agreement listed in Section 2.14 (Attachments).

"**Authority**" means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over this Master Agreement or the Statement of Work; and "Authorities" means all such authorities, agencies, bodies and departments.

"**Business Day**" means any working day, Monday to Friday inclusive, excluding statutory and other Ontario provincial government holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any day which the government of the Province of Ontario has elected to be closed for business.

"**Change Order**" means, in respect of a Statement of Work, a written amendment executed by the Parties, which specifies the changes agreed, as further described in Section 11.2 (Change Orders).

"**Client**" means, in respect of a request for services or a Statement of Work:

(a) Ontario, as represented by a ministry of Ontario over which a minister of the Crown, as appointed by the Lieutenant Governor under the Executive Council Act, R.S.O. 1990, c. E.25, presides, or any combination of such ministries, if that ministry or combination of ministries has or have entered into the request for service or Statement of Work on behalf of Ontario; and

(b) the OPS Entity, if that OPS Entity has entered into the request for service or Statement of Work.

"**Client Representative**" means, in respect of a Statement of Work, one of the individuals designated as the Client Representative or the Backup Client Representative in the Statement of Work or, if not designated in it, any other individual designated as such pursuant to Section 2.9.

"**Client Work Information**" means (a) all audio and video recordings, data, databases, designs, documents, drawings, images, information, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, Technical Information, techniques, templates, and working papers, recorded in any form and on any media, and all other assets, materials, recorded information, and products of any kind, in all forms and however recorded; that are created, developed, generated, prepared or produced by the Client or by one or more of the Personnel of the Client; and (b) any contribution made by one or more of the Personnel of the Client to any Joint Work Material.

"**Client Work Invention**" means: (a) any Invention conceived, or conceived and developed, solely or jointly by one or more of the Personnel of the Client; and (b) any contribution made by one or more of the Personnel of the Client to any Joint Work Invention.

"**Confidential Vendor Information**" means:

(a) in connection with this Master Agreement, all information of the Vendor and its Subcontractors that is confidential by its nature or in the circumstances in which it is received and is identified as confidential or as a trade secret and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge or possession of Ontario in connection with this Master Agreement but, for certainty, excluding all information of the Vendor and its Subcontractors which comes into the knowledge, possession or control of Ontario in connection with any request for services issued pursuant to this Master Agreement or in connection with any Statement of Work;

(b) in connection with any request for services issued pursuant to this Master Agreement, all information of the Vendor and its Subcontractors that is confidential by its nature or in the circumstances in which it is received and is identified as confidential or as a trade secret and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Issuer or any contractor or subcontractor at any tier of the Issuer in connection with the request for services; or

(c) in connection with any Statement of Work, all information of the Vendor and its Personnel that is confidential by its nature or in the circumstances in which it is received and is identified as confidential or as a trade secret and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Client or its Personnel in connection with the Statement of Work;

including: (a) information relating to designs, drawings, flowcharts, Intellectual Property Rights, Inventions, patterns, plans, procedures, processes, reports, schematics, specifications, templates, and working papers; and (b) electronic data, other than Ontario Data, stored or processed by the Vendor; but Confidential Vendor Information shall not include: (c) Confidential Work Information; (d) information that ceases to benefit from protection as confidential information or as a trade secret under legislation or at law as a result of Ontario's or the OPS Entity's use or disclosure of Deliverables for any purpose whatsoever that is not expressly excluded by the Statement of Work; (e) information that is or becomes generally available to the public without fault or breach by Ontario or the OPS Entity, but only after that information becomes generally available to the public; (f) information that Ontario or the OPS Entity can demonstrate to have been rightfully obtained by it, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to Ontario or the OPS Entity free of any obligation of confidence; (g) information that Ontario or the OPS Entity can demonstrate to have been rightfully known to it or in its possession, free of any obligation of confidence, when disclosed; (h) information that is independently developed by Ontario or the OPS Entity without the use of any Confidential Vendor Information; (i) Vendor Evaluation Information; or (j) the Statement of Work document and its contents.

"**Conflict of Interest**" includes, but is not limited to, any situation or circumstance where: (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including (i) having, or having access to, information in the preparation of its Proposal that is confidential to Ontario or OPS Entities and not available to other proponents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process, including the giving of a benefit of any kind, by or on behalf of the proponent to anyone employed by, or otherwise connected with, Ontario or OPS Entities; or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or (b) in relation to the performance of its contractual obligations in a contract with Ontario or the OPS Entity, the Vendor's and its Personnel's other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

"**Deliverables**" means anything and everything, in all forms and however recorded, that has been or will be created, developed, generated, prepared or produced in the performance of Services, or delivered or provided at any time during the Project Term or following the termination of the Statement of Work, by the Vendor (or its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors or others for whom it is responsible at law) as a result of the Statement of Work, as may be more fully described in the Statement of Work (including: (a) all assets, audio and video recordings, databases, designs, documents, drawings, images, know-how, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, techniques, Technical Information, templates, and working papers, of any kind; (b) data and information (whether or not contained in or on any database or electronic information storage system or media); (c) data collected as part of the Services; (d) all contributions made by one or more of the Personnel of the Vendor to any Joint Work Material; (e) all Vendor Materials; and (f) all Confidential Work Information). "Deliverables" include all developments and modifications to the foregoing developed or produced by the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law) from time to time under the Statement of Work, and copies of the above.

"**Effective Date**" means, as to this Master Agreement, the date first specified above.

"**Encumbrance**" means any encumbrance of any kind whatsoever, and includes an assignment, charge, hypotec, hypothecation, lien, mortgage, pledge, security interest, trust or deemed trust (whether contractual, statutory or otherwise arising), or other right or claim of others.

"**Executive Council**" means the council of that name comprising persons appointed by the Lieutenant Governor pursuant to the Executive Council Act R.S.O. 1990, c. E.25, as amended or replaced from time to time.

"**FIPPA**" means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended or replaced from time to time.

"**Fiscal Year**" means the period running from April 1 in one calendar year to and including March 31 in the next calendar year.

"**Fixed Price**" means, in respect of particular Services performed and/or particular Deliverables provided and subject to Article 13 (Limits on Charges under Statements of Work) of the Master Agreement, the amount set out in the Statement of Work which the Vendor may charge for particular Services performed and/or particular Deliverables provided, which amount is fixed and not subject to change unless otherwise agreed to in a Change Order. For certainty, the "Fixed Price", as it relates to the particular Services performed and/or Deliverables provided, includes all labour and material costs, insurance costs, carriage and transportation costs, and other overhead, including any fees or other charges required by law; but excludes: (i) all applicable duties and taxes (including Harmonized Sales Tax (HST); (ii) all travel and accommodation expenses; and (iii) amounts that are charged on a Per Diem Rate basis.

"**Indemnified Parties**" means each of the following and their directors, officers, advisors, agents, appointees and employees: (i) Ontario; (ii) the members of the Executive Council; (iii) officers of the Legislative Assembly and officers of the Ontario Legislature, and their respective offices; and (iv) the OPS Entities.

"**Insolvency Event**" means, in respect of any Person: the making of an assignment by such Person for the benefit of its creditors; the failure of such Person to pay its debts generally as they become due; the filing or commencement of a petition or other proceeding in respect of such Person under any bankruptcy, reorganization, moratorium, arrangement of debt or insolvency law; the appointment of a receiver, receiver and manager, or interim receiver in respect of such Person or any material part of its assets or business; the declaration of bankruptcy or insolvency of such Person; the acknowledgement (in writing or otherwise) by such Person of its insolvency or inability to pay its debts generally as they become due; the suspension of business by such Person; the making by such Person of any proposal, arrangement or compromise with its creditors under the Bankruptcy and Insolvency Act (Canada), any other statute, or otherwise; or the taking of any action for the purposes of any of the foregoing.

"**Intellectual Property Rights**" means any intellectual or industrial property rights protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including any intellectual

property rights protected by legislation (such as legislation governing copyrights, industrial designs, integrated circuit topographies, patents or trademarks) or by common law (such as confidential information and trade secrets); and at any time in the future, with respect to any licence to exercise Intellectual Property Rights, includes any intellectual or industrial property rights protected or protectable at such time under the laws of Canada, any foreign country, or any political subdivision of any country.

"**Invention**" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement to any of them, whether or not patentable.

"**Issuer**" means, in respect of a request for services referred to in: (a) the definition of "Confidential Vendor Information" in Article 1 (Definitions); (b) subsection 28.1(b) (Confidentiality - Request for Services); or (c) subsection 28.2(b) (Restrictions on Copying – Request for Services Process); the Client that issues the request for services.

"**Joint Work Invention**" means any Invention conceived, or conceived and developed, by one or more of the Personnel of the Vendor in the performance of Services with one or more of the Personnel of the Client.

"**Joint Work Material**" means anything and everything in all forms and however recorded that is created, developed, generated, prepared or produced by one or more of the Personnel of the Vendor in the performance of Services with one or more of the Personnel of the Client; but does not include any Joint Work Inventions. The foregoing includes all audio and video recordings, data, databases, designs, documents, drawings, images, information, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, Technical Information, techniques, templates, and working papers, of any kind; but does not include Inventions.

"**Losses**" means liabilities, losses, costs, damages and expenses (including legal, expert and consulting fees).

"**Master Agreement**" means this Master Agreement for Management Consulting Services, together with all Attachments and all agreements amending or supplementing this Master Agreement.

"**Master Agreement Expiry Date**" means June 15, 2017 (unless extended in accordance with Section 6.1).

"Maximum Price" means the maximum total amount, in Canadian funds, as set out in the Statement of Work, that the Vendor may charge the Client under that Statement of Work, including:

(a) all Fixed Price amounts;

(b) all amounts for Work performed on a Per Diem Rate basis;

(c) all applicable duties and taxes (including Harmonized Sales Tax (HST)); and

(d) all travel and accommodation expenses.

"**MGS**" means the Ministry of Government Services.

"**MGS Representative**" means one of the individuals designated as the MGS Representative or the Backup MGS Representative in Section 2.9, and any other individual designated as such pursuant to Section 2.9.

"**Minister (Client)**" means: (i) where the Client is a ministry of Ontario that has entered into the Statement of Work on behalf of Ontario, the minister that presides over the ministry, or any other person authorized to act on behalf of that minister; or (ii) where the Client is an OPS Entity, the individual with authority to enter into contracts on behalf of the OPS Entity, or any other person authorized to act on behalf of that person. For certainty, Minister (Client) may mean the Minister (MGS) where the Statement of Work is entered into by MGS on behalf of Ontario.

"**Minister (MGS)**" means the Minister of Government Services, or any other person authorized to act on behalf of the Minister of Government Services.

"**Moral Rights**" has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42, as amended or replaced from time to time, and includes comparable rights in applicable jurisdictions.

"**Ontario**" means Her Majesty the Queen in right of Ontario.

"**Ontario Data**" means: (1) all data (including all information whether or not Personal Information, and whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of the Client and, if the Client is an institution that is subject to FIPPA, recorded in any Record) of any kind and in any form, provided by Ontario or the OPS Entity, to the Vendor to enable the Vendor to perform the Services or otherwise owned by or in the custody or control of Ontario or the OPS Entity; (2) all Personal Information collected by the Vendor as part of the Services; and (3) all such data that are created, developed, generated, prepared or produced as a result of any compilation (whether combined or compiled with other data or not) or developments or modifications to the data described above, but where the Vendor's data are combined or compiled with Ontario Data, excluding the Vendor's data that are proprietary to the Vendor immediately prior to the Project Start Date or are proprietary to the Vendor but are not first created or produced in the performance of Services.

"**Ontario Government Insignia**" means the visual identity of the Government of Ontario and any Ontario government design, domain name, geographical indication, insignia, logo, official mark or other designation, indication, symbol or trademark, including any developments and modifications of them.

"**Ontario Materials**" means, in respect of a Statement of Work: (a) all audio and video recordings, data, databases, designs, documents, drawings, images, information, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, techniques, Technical Information, templates, and working papers, recorded in any form and on any media, that are: (i) proprietary to Ontario or the OPS Entity, and provided to the Vendor to enable the Vendor to perform the Services; or (ii) created, developed, generated, prepared or produced by the Client or by one or more of the personnel of the Client (including any contribution made by one or more personnel of the Client to any Joint Work Material); and all such materials that are created, developed, generated, prepared or produced as a result of any developments or modifications to the material described in this subparagraph (a); (b) all second stage selection documents issued by Ontario or the OPS Entity; (c) all materials described in the Statement of Work as remaining the property of Ontario or the OPS Entity; and (d) all Third-Party Ontario Materials.

"**Ontario Public Service**" means the ministries and other administrative units of Ontario over which ministers of Ontario preside, and for the purposes of this Master Agreement, request for services issued pursuant to this Master Agreement and each Statement of Work includes its agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature, and OPS Entities, and "OPS" has the same meaning.

"**OPS Confidential Information**" means all information of the Ontario Public Service and of the Client's Subcontractors that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the OPS, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor or its Subcontractors in connection with this Master Agreement, a request for services issued pursuant to this Master Agreement or a Statement of Work, including: (a) information relating to designs, drawings, flowcharts, Intellectual Property Rights, Inventions, patterns, plans, procedures, processes, reports, schematics, Technical Information, templates, and working papers; (b) electronic data stored or processed by the OPS; (c) all Confidential Work Information; (d) new information derived at any time from any such information whether created by the OPS, the Vendor or any third party; and (e) information that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation; but OPS Confidential Information shall not include information that: (f) is or becomes generally available to the public without fault or breach by the Vendor, but only after that information becomes generally available to the public; (g) the Vendor can demonstrate to have been rightfully obtained by the Vendor, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the Vendor free of any obligation of confidence; (h) the Vendor can demonstrate to have been rightfully known to or in the possession of the Vendor, free of any obligation of confidence, when disclosed; or (i) is independently developed by the Vendor without the use of any OPS Confidential Information.

"**OPS Entity**" means: (a) an advisory, adjudicative, regulatory (including those with governing boards) or operational services agency of the Province of Ontario; or (b) an entity designated by MGS as an OPS Entity, which designation may be amended from time to time at the sole discretion of MGS.

"**Party**" in respect of this Master Agreement, means Ontario or the Vendor, and "Parties" means both of them; but in respect of a Statement of Work, means: (i) Ontario, if the Statement of Work is entered into by a ministry or any combination of ministries; or (ii) the OPS Entity, if the Statement of Work is entered into by an OPS Entity; or the Vendor, and "Parties" means both of them.

"Per Diem Rate" means, in respect of a Role in a Statement of Work and subject to Article 13 (Limits on Charges under Statements of Work) of the Master Agreement, an amount set out in a Change Order to the Statement of Work, which the Vendor may charge for Services performed by an individual in a Role on one calendar day, which includes all labour and material costs, insurance costs, carriage and transportation costs, and other overhead, including any fees or other charges required by law; but excludes: (i) all applicable duties and taxes (including Harmonized Sales Tax (HST)); and (ii) all travel and accommodation expenses.

"**Performance Management Process**" means the process used by Ontario to evaluate and rate the performance of the Vendor and other vendors.

"**Permitted OPS Assignee**" means: (a) any OPS Entity; (b) any office of an officer of the Legislative Assembly or of the Ontario Legislature; (c) any Provincially Funded Organization; and (d) any non-governmental entity, where assignment to such non-governmental entity is necessitated by alternative service delivery, backward or forward integration, outsourcing, privatization, partnering, procurement endeavours, or similar activity.

"**Person**" includes if the context allows, an individual, company, corporation, limited liability company, limited liability partnership, partnership, unincorporated association, government or government agency, authority or entity however designated or constituted and includes successors to the foregoing.

"**Personal Information**" at all times, has the same definition as in subsection 2(1) of FIPPA, which, at the date first written above, is recorded information about an identifiable individual, and includes all such information obtained by the Vendor under or created by the Vendor pursuant to this Master Agreement or the Statement of Work.

"**Personal Knowledge**", in connection with any Personnel, means concepts, ideas or know-how acquired by the individual that are not retained in any electronic, optical, printed, written or other recorded form, which relate to information technology and are of a generic technical nature, and not specific to the operation and activities of Ontario or the OPS Entity, that amount to no more than an enhancement of that individual's personal knowledge, skill or expertise.

"**Personnel**" means (a) collectively, in the case of the Vendor, individuals who provide services to the Vendor or any of its Subcontractors in connection with a Statement of Work, whether as employees or independent contractors, and individuals who are assigned by the Vendor to perform Services pursuant to a Statement of Work; and (b) collectively, in the case of the Client, individuals who provide services to the Client or any of its Subcontractors, whether as employees or independent contractors, but excludes all individuals described under (a).

"**Privacy Provisions**" means, collectively, Article 27 (Privacy) and the provisions, if any, set out in the Statement of Work that relate to (a) the collection, use, disclosure or transfer of personal information; (b) compliance with FIPPA; (c) compliance with the Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, as amended or replaced from time to time; and (d) compliance with any other legislation that would address the management of personal information or other privacy issues.

"**Proceeding**" means any action, claim, demand, lawsuit, or other proceeding.

"**Project Start Date**" means, in respect of a Statement of Work, the Project Start Date set out in the Statement of Work. For certainty, a Project Start Date cannot be a date that is earlier than the Effective Date of this Master Agreement.

"**Project End Date**" means, in respect of a Statement of Work, the Project End Date set out in the Statement of Work, subject to termination under Section 6.2 (Term of Statement of Work).

"**Project Term**" means, in respect of a Statement of Work, the term of such Statement of Work commencing on the Project Start Date and continuing in effect until the Project End Date, unless otherwise terminated in accordance with this Master Agreement or the Statement of Work.

"**Proposal**" means all of the documentation submitted by the Vendor in response to the RFP, including any clarifications provided by the Vendor at the request of MGS.

"**Proprietary Vendor Materials**" means all audio and video recordings, data, databases, designs, documents, drawings, images, information, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, techniques, and templates, and any other recorded information in any form or on any medium, that are proprietary to the Vendor immediately prior to the Effective Date or are proprietary to the Vendor but are not first created or produced in the Performance of Work, and that are incorporated into, provided or used in conjunction with any Deliverables or that are used by the Vendor to provide the Services.

"**Provincially Funded Organization**" means: (a) any public sector entity of the Province of Ontario; or (b) any other entity designated by MGS as a Provincially Funded Organization, which designation may be amended from time to time at the sole discretion of MGS; but excludes (i) Ontario, as represented by a ministry of Ontario over which a minister of the Crown, as appointed by the Lieutenant Governor under the Executive Council Act, R.S.O. 1990, c. E.25, presides, or any combination of such ministries; and (ii) OPS Entities.

"**Provincially Funded Organization Notice**" shall have the meaning ascribed to the capitalized term in Section 4.3.

"**Provincially Funded Organization Agreement**" means an agreement between the Vendor and a Provincially Funded Organization as defined in Section 4.1.

"**Record**" means any recorded information, including any Personal Information, in any form: (a) provided by Ontario to the Vendor, or provided by the Vendor to Ontario, for the purposes of this Master Agreement; (b) provided by Ontario or the OPS Entity to the Vendor, or provided by the Vendor to Ontario or the OPS Entity, for the purposes of the Statement of Work; or (c) created by the Vendor in the performance of the Statement of Work; and shall exclude any "Records" described in the Statement of Work as not being in the custody or control of MGS or the Client.

"**Requirements of Law**" mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions of, and agreements with, all Authorities that now or at any time hereafter may be applicable to this Master Agreement, the Statement of Work, the Vendor, Ontario, the OPS Entity, the Services, or the Deliverables, or any part of them.

"**RFP**" means the Request for Proposals dated December 4, 2013 for Management Consulting Services, reference number OSS-00426611 issued by Ontario, as represented by the Minister (MGS), and any addenda to it.

"**Role**" means one role set out in Attachment A, restricted to one experience level in one service category for that role as set out in Attachment A.

"**Security Clearance Checks**" has the meaning set out in Article 10.

"**Services**" means all services and work to be provided or performed pursuant to a Statement of Work and includes everything that is necessary to be done, supplied or delivered by: (a) the Vendor; (b) the Vendor's Personnel; (c) the Vendor's Subcontractors; and (d) those for whom the Vendor is responsible.

"**Statement of Work**" means a contract for the performance of Services constituted by a document substantially in the form of Attachment B (Form of Statement of Work - Ministries) or Attachment C (Form of Statement of

Work – OPS Entity), as applicable, entered into by the Parties pursuant to this Master Agreement, which incorporates by reference the terms of this Master Agreement, and which identifies the Client, the Vendor, the Services and the other information set out in that Attachment. A "Statement of Work" includes all Change Orders made to it.

"**Subcontractor**" means, in the case of each Party, any contractor of that Party or any of its subcontractors at any tier of subcontracting.

"**Technical Information**" means recorded information of a technical nature as it relates to management consulting in any form and on any media, including any designs, drawings, know-how, methods, methodologies, patterns, plans, procedures, processes, schematics, specifications, techniques, templates, and working papers, but does not include data, databases, documentation, Inventions or software.

"**Term**" means: (a) in respect of this Master Agreement, the period of time commencing on the Effective Date and ending on the earlier of: (i) the Master Agreement Expiry Date; or (ii) the date of termination of this Master Agreement if it is terminated in accordance with its terms; or (b) in respect of a Statement of Work, the Project Term.

"**Third-Party Ontario Materials**" means any audio and video recordings, data, databases, designs, documents, drawings, images, information, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, techniques, Technical Information, templates, and working papers, and any other recorded information in any form and on any media, and any components of the Ontario Materials, that are not proprietary to Ontario or the OPS Entity; and that are licensed by Ontario or the OPS Entity from any third parties; but only to the extent that they are protected by Intellectual Property Rights or are not to be disclosed pursuant to obligations of confidentiality.

"**Third-Party Vendor Materials**" means all audio and video recordings, data, databases, designs, documents, drawings, images, information, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, techniques, and templates, and any other recorded information in any form or on any medium, that are not proprietary to the Vendor; that are licensed by the Vendor from any third parties and that are not to be assigned, sold or transferred to the Client; that are not first created or produced in the performance of Work; and that are incorporated into, provided or used in conjunction with the Deliverables or are used by the Vendor to provide Services.

"**Vendor Evaluation Information**" means any information about the Vendor in respect of the quality, timeliness in the delivery of Services and other qualitative measures of the Vendor and any of its Personnel and of any Work performed by the Vendor and any of its Personnel.

"**Vendor Materials**" means, in respect of a Statement of Work, all Proprietary Vendor Materials and all Third-Party Vendor Materials. For certainty, "Vendor Materials" excludes all Joint Work Inventions, Joint Work Material, Ontario Data, Ontario Materials, Vendor Work Inventions, and Vendor Work Information (and if Attachment D applies, Non-Technical Work and Other Work Inventions).

"**Vendor Representative**" means one of the individuals designated as the Vendor Representative or the Backup Vendor Representative in Section 2.9, and any other individual designated as such pursuant to Section 2.9.

"**VOR Anniversary Date**" means the 16th day of June of each calendar year.

"**Work**" means work performed under, or as a result of, the Statement of Work.

"**WSIA**" means the Workplace Safety and Insurance Act, 1997, S.O. 1997, c.16, Sch. A., as amended or replaced from time to time.

"**WSIB**" means Workplace Safety and Insurance Board of Ontario.

ARTICLE 2. INTERPRETATION

2.1 Interpretation

In this Master Agreement and each Statement of Work, unless it is otherwise clear from the context, the following terms shall have the following meanings:

(a) "**development and modification**" includes enhancement, improvement, and revision; "developments and modifications" includes all of these terms in the plural; and, "**development or modification**" and "**developments or modifications**" includes, and "**develop and modify**", "**develop or modify**" and "**developed or modified**" have corresponding meanings.

(b) "**including**" means "including without limitation" and "**includes**" means "includes without limitation"; the use of the word "including" or "includes" is not intended to limit any statement that precedes it to the items immediately following it.

2.2 No Indemnities from Ontario or OPS Entities

Despite anything else in: (i) this Master Agreement; (ii) any Statement of Work; or (iii) any document referenced in a Statement of Work relating to the Deliverables or Services; any express or implied reference to Ontario or any OPS Entity providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario or any OPS Entity, whether at the time of execution of this Master Agreement or any Statement of Work or at any time during the Term of this Master Agreement or the Project Term of any Statement of Work, shall be void and of no legal effect.

2.3 Entire Agreement

This Master Agreement embodies the entire agreement between the Parties with regard to its subject matter and supersedes any prior understanding or agreement, collateral, written or otherwise, related to the subject matter of this Master Agreement that exists between the Parties at the date of execution of this Master Agreement. Subject to the terms and conditions of this Master Agreement, each Statement of Work embodies the entire agreement between the Parties with regard to the provision of the Services subject to the Statement of Work and supersedes any prior understanding or agreement, collateral, written or otherwise, related to the subject matter of the Statement of Work that exists between the Parties at the date of execution of the Statement of Work.

2.4 Amendments

Any changes to this Master Agreement shall only be made by written amendment signed by the Minister (MGS) and the Vendor, except where this Master Agreement expressly provides for a deemed amendment. Any changes to a Statement of Work shall only be made by written amendment signed by the Minister (Client) and the Vendor, except where this Master Agreement expressly provides for a deemed amendment. No changes shall be effective or shall be carried out in the absence of such an amendment.

2.5 Severability

If any term or condition of this Master Agreement or any Statement of Work, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable, the remainder of this Master Agreement and the Statement of Work, as the case may be, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected by it.

2.6 Conflict in Documents

In the event of a conflict or inconsistency in any provisions in this Master Agreement, the RFP and the Proposal, or any of them, this Master Agreement shall govern over the RFP and the Proposal; and the RFP shall govern over the Proposal. In the event of any conflict or inconsistency between the terms and conditions of this Master

Agreement and a Statement of Work or a Change Order, or any other document issued to put into effect the terms and conditions of the Statement of Work, this Master Agreement shall prevail.

2.7 Headings

The division of this Master Agreement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Master Agreement or any Statement of Work. The Article and Section headings in this Master Agreement are not intended to be full or accurate descriptions of the text to which they refer. References in this Master Agreement to an Article, Section, subsection or Attachment refer to the applicable Article, Section, subsection or Attachment of this Master Agreement unless otherwise stated.

2.8 Force Majeure

No Party shall be liable for damages caused by delay or failure to perform its obligations under a Statement of Work where such delay or failure is caused by an event beyond its reasonable control. The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of the Statement of Work would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that force majeure events shall include acts of God, natural disasters, acts of war, riots, plagues, epidemics, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a Party seeks to excuse itself from its obligations under the Statement of Work due to a force majeure event, that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other Party may immediately terminate the Statement of Work by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating Party under the Statement of Work, at law or in equity.

2.9 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, e-mail, or personal delivery as follows:

(a) Notices to MGS shall be addressed to the attention of an individual designated as the MGS Representative at:

Ministry of Government Services
Supply Chain Ontario
Enterprise Procurement Branch
222 Jarvis Street, 8th Floor
Toronto, ON M7A 0B6

(b) Notices to the Vendor shall be addressed to the attention of an individual designated as the Vendor Representative at:

«Proponent_Name»
«Address_1_UnitStreet_Street_Name_P_»
«Address_2_City_Province__Postal_Code»

(c) Notices to the Client shall be addressed to the attention of an individual designated as the Client Representative in the Statement of Work at the address designated for service in the Statement of Work.

Notices by postage-prepaid envelope shall be deemed to have been given on the fifth Business Day after mailing. Notices by personal delivery or e-mail shall be deemed to have been given on the first Business Day after receipt by the other Party (except as provided for in Section 9.4). In the event of a

postal disruption, notices must be given by personal delivery or e-mail. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Section.

MGS Representative: Title: E-Mail:	**Wes Lapish** **Director, Enterprise Procurement Branch** **Wes.Lapish@Ontario.ca**
Backup MGS Representative: Title: E-Mail:	**Eric Smith** **Manager, Services Procurement; Enterprise Procurement Branch** **Eric.T.Smith@Ontario.ca**
Vendor Representative: E-Mail:	**«Contact_Name»** **«Email»**

Each Party may change its address or designated representative for receipt of notices by providing notice to the other Party.

2.10 Governing Law

This Master Agreement and each Statement of Work shall be governed by the laws in effect in the Province of Ontario and the applicable federal laws of Canada. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals from them. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Master Agreement or to any Statement of Work and is strictly excluded.

2.11 Currency

All amounts set out in this Master Agreement and any Statement of Work and all payments shall be in Canadian funds.

2.12 Rights and Remedies

The rights and remedies of the Parties under this Master Agreement and under each Statement of Work are cumulative, and are in addition to and not in substitution for any rights or remedies provided at law or in equity, and shall not merge upon termination of this Master Agreement or of any Statement of Work.

2.13 No Waiver

No provision of this Master Agreement or any Statement of Work shall be deemed waived, amended, or modified by either Party unless such waiver, amendment, or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment, or modification.

2.14 Attachments

The following attachments form part of this Master Agreement:

(a) Attachment A to Master Agreement – Service Categories and Roles

(b) Attachment B to Master Agreement – Form of Statement of Work - Ministries

(c) Attachment C to Master Agreement – Form of Statement of Work - OPS Entity

(d) Attachment D to Master Agreement – Vendor/Client Ownership Provisions

(e) Attachment E to Master Agreement – Client Ownership Provisions

(f) Attachment F to Master Agreement – Assignment of Copyright

(g) Attachment G to Master Agreement – Waiver of Moral Rights

(h) Attachment H to Master Agreement – Confidentiality Agreement

(i) Attachment I to Master Agreement – Invention Disclosure Form

(j) Attachment J to Master Agreement – Provincially Funded Organization Acknowledgement

ARTICLE 3. SCOPE

3.1 General

This Master Agreement sets out terms and conditions applicable to the acquisition and performance of Services pursuant to the RFP.

3.2 Acquisition of Services

Each Client may, pursuant to the terms and conditions of this Master Agreement, acquire Services based on the role(s) corresponding to the service category(s) specified in Attachment A at any time prior to the Master Agreement Expiry Date, but only by entering into a Statement of Work. Services shall be performed only pursuant to a Statement of Work. It shall be a term of each Statement of Work that the Vendor agrees to provide, subject to the terms of this Master Agreement and the applicable Statement of Work, all of the Services that fall within the scope of each Statement of Work.

3.3 Statements of Work

Each Statement of Work shall include the terms and conditions of this Master Agreement by reference and shall constitute a separate contract from every other Statement of Work. No term or condition set out in any Statement of Work shall have any effect upon any other Statement of Work. Each Statement of Work shall be governed by all of the terms and conditions of this Master Agreement and such additional terms and conditions as may be set out in the Statement of Work that are not inconsistent with the terms of this Master Agreement.

3.4 No Obligation to Enter into any Statement of Work

Neither Ontario nor any OPS Entity is under any obligation to enter into any Statement of Work with the Vendor.

3.5 Work Volumes; Non-Exclusivity

The Vendor acknowledges and agrees that Ontario makes no representation, warranty, guarantee or other agreement regarding the volume of services to be acquired from the Vendor pursuant to this Master Agreement. The Vendor acknowledges that it enters into this Master Agreement and each Statement of Work on a non-exclusive basis. Ontario and each OPS Entity reserves the right to contract with other parties, regardless of whether such other party was selected within or outside a process initiated by a request for proposals, for the same or similar services as those provided by the Vendor and reserves the right to obtain the same or similar services internally.

3.6 Exclusions

Under a Statement of Work, the Vendor and the Vendor's Personnel shall not:

(a) develop or modify any computing programming code or software programs; or

(b) unless otherwise agreed to by the Client in the Statement of Work pursuant to Section 21.1 (Request for Consent) (if Attachment D applies to the Statement of Work) or Section 19.1

(Request for Consent) (if Attachment E applies to the Statement of Work), provide to the Client or incorporate into any Deliverables any Vendor Materials.

3.7 No Restrictive Material

Without limiting any other provisions of this Master Agreement or the Statement of Work, the Vendor shall not provide or incorporate (or permit those for whom it is responsible, including its Subcontractors and Personnel to incorporate) into any Deliverables, or request a Client to consent to the Vendor providing or incorporating into any Deliverables, and shall not use or permit the use in the provision of the Services, any Restrictive Material. In this Article, "Restrictive Material" means:

(a) any art, process, machine, manufacture or composition of matter, or any improvement in any of the foregoing; or

(b) any recorded information of any nature in any form, including any assets, audio and video recordings, data, databases, designs, documents, drawings, images, information, know-how, materials, methodologies, plans, procedures, processes, products, records, reports, specifications, techniques, Technical Information, templates or working papers, including any modification to any of the foregoing;

that would:

(i) in any way restrict the ability to exercise the Intellectual Property Rights or permissions granted under this Master Agreement or any Statement of Work;

(ii) prevent the Vendor from licensing the Deliverables on the terms and conditions of this Master Agreement or any Statement of Work;

(iii) interfere with the rights granted under the Statement of Work resulting from incompatibility between the terms and conditions applicable to components of the Deliverables;

(iv) violate any licences that apply to any part of the Deliverables when the Deliverable is used in accordance with this Master Agreement or the Statement of Work; or

(v) prevent the Client at any time from entering into any contract with any contractor other than the Vendor for the development or modification or other use of the Deliverables.

ARTICLE 4. PROVINCIALLY FUNDED ORGANIZATIONS

4.1 Provincially Funded Organization Agreements

If the Vendor wishes to provide products and services to Provincially Funded Organizations, the Vendor may only do so under a separate agreement with a Provincially Funded Organization. If the Vendor receives a request from any Provincially Funded Organization to supply products and services to the Provincially Funded Organization that are the same as the Deliverables and the Services, the Vendor shall: (a) prior to engaging in negotiations with that Provincially Funded Organization, provide the Provincially Funded Organization with a copy of the acknowledgement as attached as Attachment J to this Master Agreement ("**Provincially Funded Organization Notice**"); and (b) subject to the Vendor's compliance with subsection (a) above, use commercially reasonable efforts to negotiate with that Provincially Funded Organization for the purpose of entering into a mutually agreeable agreement for the supply to the Provincially Funded Organization of products and services that are the same as the Deliverables and the Services ("**Provincially Funded Organization Agreement**") based on the same or similar terms (including price and the length of the term) of this Master Agreement.

The Vendor agrees that the Vendor and the Provincially Funded Organization remain solely responsible for negotiating the terms and conditions (including all business, legal and other terms as may be necessary or desirable for the Vendor and the Provincially Funded Organization) of the Provincially Funded Organization

Agreement and for any resulting or related relationships and agreements between the Vendor and the Provincially Funded Organization.

4.2 Status of Provincially Funded Organizations

Provincially Funded Organizations cannot enter into any Statement of Work or any other subordinate agreement to this Master Agreement to acquire any Deliverables or Services or any other products and services under this Master Agreement.

4.3 Ontario Not Liable for Vendor's Relationship with Provincially Funded Organizations

The Vendor acknowledges and agrees as follows:

(a) Ontario does not endorse, recommend or approve the suitability of: (i) any Provincially Funded Organization as a customer of the Vendor; and (ii) the terms and conditions of this Master Agreement (or any subordinate agreement under this Master Agreement) as a basis for, in whole or in part, any Provincially Funded Organization Agreement or any other resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization. The Vendor is solely responsible for conducting its own independent assessment (including obtaining its own professional advice as may be necessary and appropriate in the Vendor's specific circumstances) to determine the suitability of the above.

(b) Ontario makes no representation, assurance, warranty, or guarantee: (i) that any Provincially Funded Organizations will acquire products or services from or consider the products or services of the Vendor; or (ii) of the value or volume of products or services that may or will be ordered, if any, by any or all Provincially Funded Organizations.

(c) Ontario will not, in respect of any Provincially Funded Organization Agreement or any resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization: (i) be or be deemed to be a party to, or a guarantor of any obligations or liability of any party under, any Provincially Funded Organization Agreements or any such relationships or agreements; or (ii) be responsible or liable to the Vendor or any third party for any costs, obligations, liabilities or covenants of the Provincially Funded Organization, and nothing in any agreement between the Vendor and any Provincially Funded Organization shall have the effect of imposing or resulting in the imposition of any costs, obligations, liabilities or covenants on Ontario.

(d) The Vendor shall not, in relation to or under any Provincially Funded Organization Agreement or under any resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization, bring any Proceedings against Ontario or any of its Personnel or any Indemnified Party as a result of: (i) any act, error or omission of the parties to the Provincially Funded Organization Agreement; or (ii) any act, error or omission of Ontario or any of its Personnel.

(e) The Vendor is solely responsible for its own contract administration with each Provincially Funded Organization and shall not direct any issues that may arise with any Provincially Funded Organization to Ontario.

(f) For the purposes of any Provincially Funded Organization Agreement, the Vendor acknowledges that Provincially Funded Organizations have no power or authority to bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario.

(g) Despite any provision in this Master Agreement to the contrary, the Vendor shall be responsible for any and all Losses suffered by any Indemnified Party arising out of or in connection with any Provincially Funded Organization Agreement or any breach by the Vendor of this Article 4 (Provincially Funded Organizations).

4.4 Disclosure of Information

(a) Ontario may, from time to time and at its sole discretion, inform any or all Provincially Funded Organizations of: (i) the Vendor's status as a vendor of record; (ii) the products and services of the Vendor that are available to Ontario under this Master Agreement; and (iii) the Vendor's obligation under this Section 4.4 and under Section 4.1. In addition, Ontario and any OPS Entity may disclose, and the Vendor consents to the disclosure, to Provincially Funded Organizations of this Master Agreement or any part of it (including pricing), as amended. For certainty, the Vendor agrees that neither this Master Agreement or any part of it is considered Confidential Vendor Information and no notice to or further consent of the Vendor is required prior to disclosure to any Provincially Funded Organization.

(b) If the Vendor is requested by a Provincially Funded Organization to do so, the Vendor shall provide to that Provincially Funded Organization the following documents and information: (i) the RFP and other related procurement documents that were publicly issued; and (ii) the Vendor's proposal in response to the RFP, but only to the extent that it does not include OPS Confidential Information.

(c) The Vendor agrees to provide to Ontario, at Ontario's request, data and information regarding Provincially Funded Organization access to and acquisition of products and services from the Vendor.

(d) The Vendor consents to Ontario receiving data and information from a Provincially Funded Organization of such Provincially Funded Organization's request for access to and acquisition of products and services from the Vendor.

ARTICLE 5. LEGAL RELATIONSHIPS AMONGST THE PARTIES & THIRD PARTIES

5.1 Vendor and its Personnel Not an Agent, Employee or Partner

The Vendor shall have no power or authority to bind Ontario or any OPS Entity or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario or any OPS Entity. The Vendor shall not hold out itself, or any of its Personnel, as an agent, employee or partner of Ontario or of any OPS Entity. Nothing in this Master Agreement or any Statement of Work shall have the effect of creating an agency, employment or partnership relationship between Ontario or any OPS Entity and the Vendor (or any of the Vendor's directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors), or constitute an appointment under the Public Service of Ontario Act, 2006, S.O. 2006, Chapter 35, as amended. The Vendor is solely responsible for all legally required employer and employee contributions and deductions, compensation and benefits for itself and its Personnel.

5.2 Responsibility of Vendor

The Vendor agrees that it is liable for the acts and omissions of its and of its Subcontractors' directors, officers, Personnel, agents, partners, affiliates, and volunteers. The Vendor shall advise these individuals and entities of its obligations under this Master Agreement and under the Statement of Work and, without limiting the generality of the foregoing, shall take appropriate action to ensure compliance with (a) this Master Agreement and the Statement of Work generally, (b) the requirements of Article 26 (OPS Confidential Information), and (c) the Privacy Provisions. Ontario and the OPS Entities shall have no liability (vicarious or otherwise) for any acts or omissions of the Vendor's and its Subcontractors' directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors. This Section is in addition to any and all of the Vendor's liabilities under this Master Agreement, each Statement of Work and under the general application of law. This Section shall survive the termination or expiry of this Master Agreement and every Statement of Work.

5.3 Subcontracting or Assignment

The Vendor shall not subcontract or assign the whole or any part of this Master Agreement without the prior written consent of the Minister (MGS). Such consent shall be in the sole discretion of the Minister (MGS) and

subject to the terms and conditions that may be imposed by the Minister (MGS). The Vendor shall not subcontract or assign the whole or any part of any Statement of Work or any monies due under it without the prior written consent of the Minister (Client). Such consent shall be in the sole discretion of the Minister (Client) and subject to the terms and conditions that may be imposed by the Minister (Client). Without limiting the generality of the conditions which the Minister (Client) may require prior to consenting to the Vendor's use of a Subcontractor, every contract entered into by the Vendor with a Subcontractor shall adopt all of the terms and conditions of this Master Agreement and the Statement of Work as far as applicable to those parts of the Services provided by the Subcontractor. Nothing in this Master Agreement or any Statement of Work shall create a contractual relationship between any Subcontractor or its employees and Ontario or any OPS Entity.

5.4 Assignment of Statement of Work by the Client

Provided that the Vendor has received prior written notice of the Client's intent to assign: (a) where the Client is Ontario, the Minister (Client) may assign without the consent of the Vendor all or any part of a Statement of Work to any OPS Entity, any office of an officer of the Legislative Assembly or of the Ontario Legislature, any Provincially Funded Organization, or where such assignment is necessitated by outsourcing, privatizing, partnering or similar activity, to a non-governmental entity; and (b) where the Client is an OPS Entity, the Minister (Client) may assign without the consent of the Vendor all or any part of a Statement of Work to Ontario, or where such assignment is necessitated by outsourcing, privatizing, partnering or similar activity, to a non-governmental entity.

5.5 Duty to Disclose Change of Control

If the Vendor undergoes a change in control, the Vendor shall disclose such change in control to the MGS Representative within fourteen (14) calendar days of such change in control and shall comply with any reasonable terms and conditions subsequently prescribed by MGS resulting from the disclosure.

5.6 Conflict of Interest

The Vendor shall, and shall require each of its Personnel to: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to MGS and the Client without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by MGS or the Client to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Minister (MGS) may, at its sole discretion, immediately terminate this Master Agreement, and the Minister (Client) may, at its sole discretion, immediately terminate any or all Statements of Work, upon giving notice to the Vendor where (i) the Vendor fails to disclose an actual or potential Conflict of Interest; (ii) the Vendor fails to comply with any requirements prescribed by MGS or the Client, as the case may be, to resolve a Conflict of Interest; or (iii) the Vendor's Conflict of Interest cannot be resolved. This Section shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

5.7 Binding Nature

This Master Agreement and each Statement of Work is binding upon, and enures to the benefit of, the Parties and their respective successors and permitted assigns.

ARTICLE 6. TERM

6.1 Term of Master Agreement

This Master Agreement shall be in effect from and including the Effective Date and shall remain in force until and including the Master Agreement Expiry Date, unless terminated earlier in accordance with the terms of this Master Agreement or unless extended by the Minister (MGS), in its sole discretion, on the same terms and conditions (excluding any option to further extend this Master Agreement during the extension period) for an additional period of twelve months by written notice from MGS to the Vendor given not less than sixty (60) days prior to the Master Agreement Expiry Date.

6.2 Term of Statement of Work

The Project Term with respect to a Statement of Work shall commence on the applicable Project Start Date, and shall continue until the Project End Date, unless terminated earlier in accordance with the terms of this Master Agreement or the Statement of Work. Except as provided for in Section 6.3, a Project End Date may only be extended by a Change Order.

For certainty, a Project End Date in a Statement of Work can be a date that is up to twelve months past the end of the Term of the Master Agreement. Despite anything to the contrary in any Statement of Work or any Change Order, any Statement of Work, which is in effect on the last day of the twelve-month period commencing immediately after the end of the Term of the Master Agreement, shall terminate on that day.

6.3 Extension of Project End Dates Due to Labour Disruption

If there is a labour disruption (e.g. a lawful or unlawful strike or a lock-out) or threatened labour disruption by Crown employees, the Client may notify the Vendor of the Client's intent to, among other things, extend the Project End Date. In such notice, the Client shall specify the anticipated time period of the impact or potential impact of the labour disruption or threatened labour disruption ("**Anticipated Disruption Period**"). Upon such notice being provided to the Vendor, the Project End Date and any dates set out in the Statement of Work which specify when obligations must be met (including any milestone dates, payment dates, etc.) shall be deemed to be amended to a later date that is equal to the number of days of the Anticipated Disruption Period, as set out in the Client's notice. If any of such amended date(s) falls on a non-Business Day, the Project End Date shall be deemed to be the next Business Day. The Client may revise any such Anticipated Disruption Period at any time and from time to time prior to the end of the Anticipated Disruption Period.

If the Anticipated Disruption Period exceeds fifty (50) consecutive Business Days, the Vendor may terminate the Statement of Work at any time effective after the fiftieth (50^{th}) Business Day by giving notice no less than five (5) Business Days prior to the Vendor's intended date of termination. If a Statement of Work is terminated by the Vendor pursuant to this Section 6.3 (Extension of Project End Dates Due to Labour Disruption), the Client shall be liable to the Vendor only for payment for Services properly performed and Deliverables delivered to and accepted by the Client up to and including the effective date of the termination, unless the Client and the Vendor agree otherwise in an agreement signed by both parties that expressly references this Section 6.3 (Extension of Project End Dates Due to Labour Disruption). For certainty, if a Statement of Work provides that payment will be due and owing upon the meeting of a specified milestone (such as, for example, delivery and/or acceptance of a specified Deliverable) and the effective date of the termination of the Statement of Work passes prior to the specified milestone being met, the Client is not liable to the Vendor for payment for Services performed and/or Deliverables delivered and/or accepted in relation to that specified milestone, unless the Client and the Vendor agree otherwise in an agreement signed by both parties that expressly references this Section 6.3 (Extension of Project End Dates Due to Labour Disruption). Termination shall not relieve the Vendor of its warranties and other responsibilities relating to the accepted Deliverables, the Services performed or money paid, or of its obligations upon termination of the Statement of Work. In addition to its other rights of hold back, the Client may hold back payment or set off against any payments owed if the Vendor fails to comply with its obligations on termination. The provisions of this Section 6.3 (Extension of Project End Dates Due to Labour Disruptions) shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 7. SECOND STAGE SELECTION PROCESS

7.1 Requests for Services

Any Client may issue a written request for services to the Vendor and to other vendors selected pursuant to the RFP, setting out a brief description of the services required, the timeframes, and any other requirements.

7.2 Proposals

If the Vendor wishes to respond to a request for services issued to the Vendor, it shall prepare, at no cost, a written proposal delivered to the Client setting out the list and description of the Deliverables, a list of the Roles (including experience levels) required, the names and resumes of the Personnel that it proposes to assign to each of the Roles, its proposed pricing, and the estimated duration of each position required to achieve completion of the proposed services within the timeframe specified in the request for services. The Vendor shall

comply with the submission requirements and other requirements in the request for services. The Vendor shall ensure that each individual proposed by the Vendor is qualified for the proposed Role. The Vendor shall provide the Client or its representatives with the opportunity to interview its proposed Personnel, at no cost. If the Vendor receives a request for services but does not intend to submit a proposal, it shall notify the Client that it will not do so.

The Client shall have the right in its absolute discretion to disqualify the Vendor, or reject all or any part of its proposal: (i) if the same individual is proposed by the Vendor and any other vendor; (ii) if an individual is proposed by the Vendor that Ontario or any OPS Entity determines is not suitable based on information provided by references, based on past performance on previous contracts or previous employment with the OPS, or based on Security Clearance Checks; or (iii) if any information provided by the Vendor is materially inaccurate or the Vendor makes a material misrepresentation or omission; and this right is in addition to any other express rights or any other rights which may be implied in the circumstances. Neither Ontario nor any OPS Entity shall be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by the Vendor or any third party resulting from exercising any of its express or implied rights under this Section.

ARTICLE 8. PERFORMANCE BY VENDOR

8.1 Performance

Under each Statement of Work, the Vendor shall diligently carry out and complete the Services in accordance with the Statement of Work and Requirements of Law, and the Vendor shall:

(a) provide any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Statement of Work or customarily furnished by Persons providing services of the type provided under the Statement of Work in similar situations in the Province of Ontario; and

(b) adhere to commonly accepted norms of ethical business practices, including establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the Client.

8.2 Use and Access Restrictions

The Vendor acknowledges that unless it obtains specific written preauthorization from the Client, any access to or use of OPS property, technology or information that is not necessary for the performance of its contractual obligations under a Statement of Work is strictly prohibited. The Vendor further acknowledges that Ontario and, if the Client is an OPS Entity, the OPS Entity, may monitor the Vendor to ensure compliance with this Section. This Section is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.

8.3 Completion of Services

If any of the Services or Deliverables provided is not in accordance with the requirements of the Statement of Work and is not to the satisfaction of the Client, the Client may reject it or may issue a rectification notice to the Vendor setting out the manner and time-frame for rectification. Within seven (7) Business Days of receipt of a rectification notice, the Vendor shall either comply with that rectification notice at its own expense or provide a rectification plan satisfactory to the Client. If the Vendor fails to either comply with that rectification notice or provide a rectification plan that is satisfactory to the Client, the Client may immediately:

(a) accept all or any part of the Services or Deliverables (even if of diminished value) provided to the Client by the date specified by the Client, but the Client shall be liable to the Vendor only for payment for Services properly performed and Deliverables delivered to and accepted by the Client;

(b) terminate the Statement of Work; or

(c) do both (a) and (b) above.

If the Vendor has been given a prior rectification notice, the same subsequent type of non-compliance by the Vendor shall allow the Client to immediately terminate the Statement of Work.

8.4 Performance Management Process

The Vendor agrees to participate in, and comply with the terms of, the Performance Management Process. The Vendor acknowledges that the Performance Management Process may be changed from time to time by Ontario at Ontario's sole discretion. Without limiting the foregoing, the Vendor acknowledges and agrees:

(a) to adhere to any guidelines and processes issued in respect of the Performance Management Process;

(b) to respond to requests from MGS or a Client for information or feedback arising out of or about the Performance Management Process (including responding to Vendor Evaluation Information), within the time frame specified in the request (or in the absence of a time frame, within a reasonable period of time);

(c) to meet with MGS or the Client, whether remotely or in person, at no charge to MGS or the Client, to discuss performance and other evaluations (including Vendor Evaluation Information) or any other issues arising out of or about the Performance Management Process;

(d) that performance ratings, performance feedback and other information about the Vendor and its Personnel gathered or obtained through the Performance Management Process (including Vendor Evaluation Information) may be made available to the OPS (including OPS Entities), as well as Provincially Funded Organizations;

(e) in addition to and without limiting any provision, statutory or otherwise, that protects employees or other personnel of Ontario or any OPS Entity from actions or proceedings for damages, the Vendor agrees that no action or proceeding for damages may be brought against any Personnel of Ontario or of any OPS Entity for any acts done in good faith in connection with the Performance Management Process (including any evaluation of the Vendor by any such Personnel) or for any alleged neglect or default in the execution in good faith of such Personnel's duty as it relates to the Performance Management Process; and

(f) that performance ratings and performance and other evaluations prepared or obtained through the Performance Management Process (including Vendor Evaluation Information) may be used by Ontario or OPS Entities under this VOR arrangement or any other vendor of record arrangement, as well as in other procurements, whether or not related to this VOR arrangement.

ARTICLE 9. PERSONNEL

9.1 Personnel Qualifications

The Vendor shall provide qualified Personnel under each Statement of Work. The Vendor shall not permit any individual to perform any Services in any Role if the individual does not have the experience level specified in the Statement of Work for that Role, or does not have the qualifications for that Role (other than the experience levels) as set out in Attachment A.

9.2 Performance by Named Individuals Only

The Parties agree that only those individuals named in a Statement of Work shall perform the Services on behalf of the Vendor. The Parties agree that each Statement of Work shall specify the Role for each named individual. The Vendor shall use commercially reasonable efforts to maintain continuity under a Statement of Work by using the same Personnel to perform the Services throughout the Project Term. The Vendor shall not

replace or substitute any of the individuals named in the Statement of Work without the prior written approval of the Client, which may not be arbitrarily or unreasonably withheld.

9.3 Replacement of Personnel

If the Client, in its sole discretion, deems any of the Vendor's Personnel to be inappropriate, the Client may require the Vendor to replace such Personnel. The Vendor shall immediately, upon receipt of the Client's request, remove any individual from performing any Services under the Statement of Work. The Vendor shall submit to the Client the name and resume of a suitable replacement for each of the Personnel deemed inappropriate by the Client. The Vendor shall provide the Client with the opportunity to interview its proposed Personnel, at no cost to the Client. The Vendor agrees that any proposed replacement Personnel must be qualified in the same Role and must possess similar or greater qualifications than the individual being replaced, and that the Client's approval may, at the Client's discretion, be subject to Article 10 (Security Clearance Checks). The Vendor shall not charge the Client more for the replacement under the Statement of Work, even if the replacement Personnel holds a more senior position or has more experience than the individual being replaced. If the Vendor fails to propose any replacement Personnel within three (3) Business Days, or proposes replacement Personnel who the Client deems, in its sole discretion, to be inappropriate or not available in a timely manner, the Minister (Client) may immediately terminate the Statement of Work by giving notice of termination and such termination shall be in addition to the other rights and remedies under the Statement of Work, at law or in equity. Neither Ontario nor any OPS Entity shall have any liability to the Vendor or any of its Personnel arising out of or in connection with such termination of the Statement of Work or with any replacement or request for replacement of any Personnel.

9.4 Substitution or Replacement Prior to or Shortly After Project Start Date

(a) If:

(i) prior to the Project Start Date, the Vendor notifies the Client of its intent to replace or substitute any individual named in a Statement of Work; or

(ii) on or within five (5) Business Days after the Project Start Date, the Vendor notifies the Client of its intent to replace or substitute any individual named in a Statement of Work within ten (10) Business Days after the Project Start Date;

the Client may, at its sole discretion, immediately terminate the Statement of Work by giving notice of termination and such termination shall be in addition to the other rights and remedies under the Statement of Work, at law or in equity. For certainty, the Client is not obligated to consider the replacement or substitute offered by the Vendor, or any individual proposed by the Vendor but not selected by the Client during the Second Stage Selection process for the Statement of Work, before exercising the right to terminate under this section.

(b) Termination under this Section 9.4 shall be in writing ("Termination Email Notice") and may be delivered via e-mail to the Vendor's representative identified in the Statement of Work or to the individual designated as the Vendor Representative in Section 2.9(b). The Termination E-mail Notice is considered delivered to the Vendor one (1) hour after it was sent.

(c) Payment, if any, for any Services performed or Deliverables delivered and accepted prior to the effective date of termination of the Statement of Work when terminated under this Section 9.4 shall be made in accordance with Section 36.4 (Payment to Vendor Upon Termination) of this Master Agreement.

ARTICLE 10. SECURITY CLEARANCE CHECKS

10.1 Definition

For the purposes of this Master Agreement, the following capitalized terms mean:

"**Company Level Check**" is a security screening check, which requires checks to be conducted on all directors and officers of the company, regardless of whether they will have direct involvement in the work associated with the procurement which was deemed to require security screening. In order to be issued a company level clearance, all directors and officers of the company and the Company Security Officer (CSO) must consent to security screening and obtain clearances. Company-level screening checks are conducted only where the security risk assessment indicates the necessity.

"**Company Security Officer**" is a person who holds that standing in the Contractor Security Screening Program. A Company Security Officer (or CSO) plays an administrative role in the security screening process on behalf of his or her company and must hold a valid security clearance issued by the Employee Relations Division of MGS (ERD, MGS) prior to performing that role. The CSO is responsible for the verification of identity for workers requiring screening for contracted work, where required.

"**Criminal Record Check**" is a search of the Canadian Police Information Centre (CPIC) database maintained by the RCMP, using an individual's name, date of birth and any other information necessary to verify identity, for information about the individual relating to:

- Convictions under the offense provisions of federal statutes recorded in the CPIC system;
- Records of discharges (absolute and conditional) which have not been removed from the CPIC system, in accordance with the *Criminal Records Act (Canada)*. Note: Information about absolute discharges will not be collected after one (1) year from the date of disposition. Information about conditional discharges will not be collected after three (3) years from the date of disposition;
- Charges that have been laid but are not resolved (unresolved charges) under the offense provisions of federal statutes; and
- Records of judicial orders in effect (e.g. warrants) that are related to federal offence charges or convictions.

"**Driver's Record Check**" is conducted where driving is a requirement for the contract where a valid driver's licence is required. It involves a check of provincial databases for information regarding driving history using the individual's driver licence number. This check provides a three year history of *Highway Traffic Act (Ontario)* and *Criminal Code* of Canada convictions and any current suspensions, along with the driver's current listed address and licence status.

"**General Level Security Screening Check**" requires the individual to obtain a Criminal Record Check (see the definition for Criminal Record Check for additional information). A general level security screening check may also include a Driver's Record Check, and/or an Out-of-Country Police Certificate (US and/or international), where required.

"**Other/Enhanced Level Security Screening Check**" is a higher level check that is required when the duties or tasks establish a risk level greater than can be addressed through a General Level Security Screening Check. Other/Enhanced level security screening checks include one or more of the following check types in addition to the General Level Security Screening Check: fingerprint-based criminal record check, personal history investigation, local police records check, family interview and/or financial background check.

"**Out-of-Country Driver's Record Check (US and/or International)**" is when the individual has lived outside Canada for more than six (6) months within the last five (5) years, an out of country driver records check from the jurisdiction(s) in which they have resided is required. This check includes information such as current suspensions, along with the driver's current listed address and licence status. Driver's record check is conducted where driving is a requirement for a Statement of Work where a valid driver's licence is required. If the certificate is not in French or English, the individual is to provide an English translation along with the original certificate.

"**Out of Country Police Certificate (US/International)**" is a summary of an individual's criminal record or a declaration of the absence of any criminal record from a law enforcement agency in another country outside of Canada. Police certificates are different in each state/country and may be called police clearance certificates, good conduct certificates, judicial record extracts, etc. Where an individual has lived outside of Canada for more than six (6) months within the last five (5) years, an out-of-country police certificate from the jurisdiction(s) in which they resided is required. If the certificate is not in French or English, the individual is to provide an English translation along with the original certificate.

"**Security Screening Check**" is the process conducted by the Vendor to gather information on designated persons for submission to the Client in order to obtain a Security Clearance and includes all of the following:

1. A written declaration by an individual disclosing any unresolved charges and previous convictions under the offence provisions of federal statutes, including but not limited to the *Criminal Code (Canada)*, for which a pardon under the *Criminal Records Act (Canada)* has not been granted;

2. a General Level Security Screening Check; and

3. Other/Enhanced Level Security Screening Check (if required, as determined by the Client or ERD, MGS).

"**Security Clearance**" means a decision made by ERD, MGS following receipt of the Security Screening Check documents that will permit the person being cleared to engage in the performance of the services.

10.2 Security Screening Check

(a) Security Clearances are not provided in perpetuity and are subject to revocation by MGS or the Client at its sole discretion at any time. Security Screening Checks shall be renewed at the intervals as may be specified by ERD, MGS.

(b) On notification from MGS, the Vendor shall, prior to entering into a Statement of Work or otherwise during the Term, provide to the ERD, MGS, completed Security Screening Checks for all persons engaged in the performance of the services who are either not cleared or for whom a renewal is required. All documents shall be provided through the Vendor's designated Company Security Officer.

(c) All Security Screening Checks shall be provided in form and content acceptable to the ERD, MGS and shall include all required consents.

(d) If a person or company has been deemed by the Ministry to require a Security Clearance they shall not engage in the performance of the services unless they have been provided a Security Clearance by the ERD, MGS.

10.3 Changes

(a) During the Term of this Master Agreement or a Statement of Work, or an agreement arising from it, the Vendor shall report to the ERD, MGS, within five Business Days thereof, any change to:

(i) any information provided as part of a Security Screening Check process;

(ii) employees, agents and subcontractors or, where a Company Level Check is required, partners, directors, officers and shareholders, who are or will be engaged in providing the security screening documents or engaged in the performance of the services.

(b) The ERD, MGS shall assess the above information and may instruct the Vendor to comply with any instructions arising which may include requests for provision of information to amend existing Security Clearances or provide for new Security Clearances.

10.4 Default under Agreement

During the Term of this Master Agreement and any Statement of Work, the Vendor shall be in default under this Master Agreement and the applicable Statement of Work if they fail to comply with the requirements of this Article.

ARTICLE 11. CHANGE MANAGEMENT

11.1 Change Requests and Impact Assessments

A Client may request a change to a Statement of Work by submitting to the Vendor a written change request reasonably detailing the scope and priority of the desired changes. The Vendor shall promptly evaluate each change requested by the Client. The Vendor shall promptly provide the Client with a written impact assessment which addresses relevant factors, including the implications for Roles, Personnel, deadlines, milestones, costs and any other terms and conditions of the Statement of Work. Such evaluation and assessment by the Vendor shall be made without charge to the Client. If the Vendor does not have sufficient resources to perform any requested changes in accordance with any time limits set out in the change request, the Vendor shall promptly notify the Client.

11.2 Change Orders

Each Change Order must contain:

(a) an effective date;

(b) a description of any additional Services to be performed or Deliverables to be provided, the names of the Vendor's Personnel necessary to perform such additional Services, and specifying the Role (including the experience level) for each named individual, and the availability of such Personnel over the relevant time period;

(c) a description of any Services, Roles or named individuals deleted from the Statement of Work, if applicable;

(d) a description of any other changes to the performance required of either Party, if applicable;

(e) a statement of the impact of the changes on the Services, Deliverables, deadlines, milestones, costs or other requirements of the Statement of Work;

(f) any new Maximum Price or Project End Date, if applicable;

(g) any new Fixed Price, if applicable;

(h) the Per Diem Rate for each additional Role, if applicable; and

(i) signatures of the duly authorized signing officers of each Party.

11.3 Changes to Milestones

If there is any change to the ability of the Vendor to meet an applicable milestone set out in the Statement of Work, the Vendor shall promptly notify the Client. Any changes to the applicable milestone set out in the Statement of Work and any terms and conditions of the Statement of Work resulting from the change must be effected by a Change Order.

11.4 Pricing for Requested Changes

(a) *Changes Impacting Fixed Price* - Where the change request results in an increase or a reduction to a Fixed Price, the Client and the Vendor shall negotiate: (i) the amount of the additional charge or reduction to the Fixed Price resulting from the change request, if

applicable; and (ii) the change to the Maximum Price under that Statement of Work resulting from the change request, if applicable. The increase or decrease to the Fixed Price and/or Maximum Price shall be set out in the Change Order.

Where the Client and the Vendor are unable to agree to a fixed amount of the increase to a Fixed Price resulting from a change request, the Vendor agrees that, at the Client's option, the Client may require that the Work be performed by the Vendor under the change request on a Per Diem Rate basis in accordance with subsection (b) (Per Diem Rate for Change Requests) of this Section 11.4.

(b) *Per Diem Rate for Change Requests* - Where a Per Diem Rate stated in the Statement of Work applies to a Role (at the same experience level) contemplated in the change request, the Per Diem Rate applicable to the change request shall be the Per Diem Rate for that Role as set out in the Statement of Work, or any lesser Per Diem Rate agreed to by the Client and the Vendor. Where Per Diem Rates stated in the Statement of Work do not apply to a Role (at the same experience level) contemplated in the change request, the Per Diem Rate for each individual in such Role may be negotiated between the Client and the Vendor within a reasonable period of time, provided that the Per Diem Rate complies with the provisions of the Master Agreement and this Section 11.4.

(c) *Changes Impacting Work Done on a Per Diem Rate Basis* - Where the change request results in a change impacting Work being done on a Per Diem Rate basis, the Client and the Vendor shall negotiate the change to the Maximum Price under the Statement of Work resulting from the change request. Where the change request results in the addition of a Role, the Per Diem Rate for that Role shall be determined in accordance with subsection (b) (Per Diem Rate for Change Requests) of this Section 11.4.

11.5 No Payment Without Executed Change Order

No change request shall be implemented or incorporated as part of a Statement of Work unless and until a Change Order has been executed by both the Minister (Client) and the Vendor. Under no circumstances will the Vendor be entitled to payment for any goods or services provided pursuant to a change request that have not been described in a Change Order.

ARTICLE 12. REPORTS

12.1 Monthly Usage Reports

The Vendor shall prepare a usage report (referred to in this Article as a "Usage Report") for each calendar month for: (a) every Statement of Work (including any extension to a Statement of Work) and every Change Order entered into by the Vendor pursuant to this Master Agreement; and (b) the value and volume of all services acquired by Provincially Funded Organizations from the Vendor under Provincially Funded Organization Agreements that are the same as the Services under this Master Agreement. If no Statements of Work or Change Orders are entered into during a calendar month, the Vendor shall submit a NIL report. In each Usage Report, the Vendor shall set out the name of the Vendor, the month and year covered, and all other information described below in this Article. The Vendor shall provide each Usage Report to the MGS Representative within ten (10) Business Days of the end of the applicable month.

12.2 Contents of Usage Report

In each Usage Report, the Vendor shall include the following information: (1) in respect of each Statement of Work in effect during the applicable calendar month: (a) vendor of record (VOR) number; (b) ministry/cluster/OPS Entity; (c) branch; (d) contract signing date; (e) contact information (name, e-mail address, phone) of the ministry or OPS Entity for which the Statement of Work is being performed; (f) Statement of Work number; (g) description of Services; (h) purchase order number (optional additional information field for Vendor); (i) Project Start Date; (j) Project End Date (or anticipated completion date of project); (k) consultants' roles; (l) Service Category in which consultants are working; (m) estimated cost (contract value); (n) contract extension

information; and (o) such other information as MGS may require; and (2) the value and volume of all services acquired by Provincially Funded Organizations from the Vendor under Provincially Funded Organization Agreements that are the same as the Services under this Master Agreement. The Vendor shall include the total dollar amount of all Statements of Work issued during that month (excluding Harmonized Sales Tax) to all Clients, and any other information that is reasonably requested by MGS. Any extension or change to a Statement of Work, including dollar amount, must be reported during the month that extensions or changes took place.

12.3 Format of Usage Report

The Usage Form must be provided in the form available for downloading as an Excel file from: http://www.doingbusiness.mgs.gov.on.ca/mbs/psb/vordb.nsf/english/home_page?openDocument&login, or from such other web address as MGS may notify the Vendor. The Vendor shall send each Usage Report by electronic mail to the MGS Representative at the email address stipulated by notice from MGS to the Vendor.

12.4 Costs

The Vendor shall be solely responsible for all costs associated with establishing, preparing, supporting and producing each Usage Report and all other reports covered by this Article.

12.5 Other Documentation

The Vendor shall provide the MGS Representative from time to time with any other documentation that the MGS Representative requests or which is required by this Master Agreement.

ARTICLE 13. LIMITS ON CHARGES UNDER STATEMENTS OF WORK

13.1 Charges under a Statement of Work

The amount that can be charged under a Statement of Work shall be set out in the Statement of Work.

13.2 Charges on a Fixed Price Basis

If the Statement of Work specifies a charge on a Fixed Price basis, the Vendor shall not charge more than the Fixed Price, even if the Work requires additional time to complete that would otherwise have brought the cost to the Client to an amount in excess of the Fixed Price specified in the Statement of Work. Any amount charged in excess of the Fixed Price shall be deemed to be an overpayment.

The Client shall pay such portion of the Fixed Price in accordance with the payment schedule set out in the Statement of Work.

13.3 Charges on a Per Diem Rate Basis

If the Statement of Work specifies a charge on a Per Diem Rate basis, the following shall apply to that portion of the Statement of Work that is charged on a Per Diem Rate basis:

(a) *Charges for Services Performed During One Day* - The Vendor shall not be paid more than the applicable Per Diem Rate for Services performed by an individual in a Role on one calendar day.

The Vendor shall invoice the Client for the actual number of hours worked in one calendar day where the Services performed by the individual under a Statement of Work totals less than 7.25 hours in a Role for a calendar day. The Vendor shall invoice the Client for no more than the applicable Per Diem Rate where an individual in a Role has performed Services totalling 7.25 hours or more in one calendar day. For example, if an individual works 8 hours in a Role on one calendar day, the Vendor shall not be paid overtime for the time worked in excess of 7.25 hours. If an individual works less than 7.25 hours in a Role on a calendar day, the Vendor's

charge for the individual's Services in that Role on that calendar day shall be pro-rated against the applicable Per Diem Rate. For example, if an individual works 6 hours in a Role on one calendar day, the applicable Per Diem Rate shall be pro-rated by dividing it by 7.25 and multiplying it by 6. Any amount paid in excess of the pro-rated amount is deemed to be an overpayment.

(b) *Per Diem Rates and Experience Levels* - Under a Statement of Work, the Per Diem Rate for a Role shall not increase as a result of an individual gaining experience in performing that Role under that Statement of Work. In respect of a Statement of Work, the experience level of each individual shall be deemed to be fixed for the Assignment Term upon entering into the Statement of Work.

(c) *Separate Timesheet* - The Vendor shall maintain a timesheet for the Work performed on a Per Diem Rate basis that is separate from the timesheet for Work performed on a Fixed Price basis.

13.4 Travel, Meal and Accommodation Expenses

The Client is not responsible for any travel or accommodation expenses incurred by the Vendor that are not pre-approved in writing by the Client and charged in accordance with Management Board of Cabinet's Travel, Meal and Hospitality Expenses Directive, as may be amended or replaced from time to time. Accommodation arrangements may only be made with those facilities listed in the Ontario government's Accommodations Directory, as may be amended or replaced from time to time. The Vendor shall list travel and accommodation expenses as separate line items on its invoices, and shall support all such expenses with receipts.

The Client is not responsible for and the Vendor shall not charge for any meal, hospitality or incidental expenses incurred by the Vendor.

13.5 Maximum Prices

If the Statement of Work specifies a Maximum Price, the Vendor shall not invoice the Client for more than the applicable Maximum Price. Any amount paid in excess of a Maximum Price is deemed to be an overpayment.

13.6 Overpayments

The Vendor agrees to repay any overpayment immediately upon demand by the Client.

13.7 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 14. PAYMENT FOR PERFORMANCE

14.1 Payment Subject to Limits

Subject to Article 13 (Limits on Charges Under Statement of Work), the provisions of this Article, and the Vendor's compliance with the provisions of this Master Agreement and the Statement of Work, the Client shall pay the Vendor for Services and/or Deliverables provided as set out in the Statement of Work. Services and/or Deliverables may not be pre-paid.

14.2 Billing and Payment Process

Unless the Vendor and the Client expressly set out an alternative billing and payment process in the Statement of Work, the following process shall govern:

(a) the Vendor shall provide the Client with a billing statement in accordance with the payment schedule set out in the Statement of Work and that billing statement shall include:

(i) the reference number assigned to the Statement of Work by the Client;

(ii) a brief description of the Deliverables and Services provided for the period covered by the billing statement;

(iii) the amount payable under the Statement of Work, and the amount of applicable taxes (such as HST), if payable by the Client, identified as separate items;

(iv) a brief description of the event giving rise to the amount payable (such as, for example, identifying the particular milestone that was successfully completed); and

(v) any travel and accommodation expenses, identified as separate items, that are pre-approved in accordance with Section 13.4 (Travel, Meal and Accommodation Expenses) of the Master Agreement;

(b) if the Statement of Work also specifies particular charges on a Per Diem Rate basis, the Vendor shall also provide the Client with a monthly billing statement that applies to charges on a Per Diem Rate basis no later than ten (10) Business Days after the end of each month and that billing statement shall include:

(i) the reference number assigned to the Statement of Work by the Client;

(ii) a brief description of the Services provided on a Per Diem Rate basis for the relevant month;

(iii) the Per Diem Rate applicable to each Role, and the amount of applicable taxes (such as HST), if payable by the Client, identified as separate items;

(iv) the total billable time worked by each individual in each Role; and

(v) any travel and accommodation expenses, identified as separate items, that are pre-approved in accordance with Section 13.4 (Travel, Meal and Accommodation Expenses) of the Master Agreement;

(c) the Client shall approve or reject each billing statement within fifteen (15) Business Days of its receipt. If the Client rejects the billing statement, it shall so advise the Vendor promptly in writing and the Vendor shall provide additional information as required by the Client to substantiate the billing statement; and

(d) each billing statement is subject to approval of the Client before any payment is released. Payment shall be made within thirty (30) Business Days of such approval.

14.3 Certification of Acceptance

Payment of invoices under the Statement of Work is subject to acceptance in accordance with the process set out in Section 8.3 (Completion of Services) of this Master Agreement.

14.4 Holdback

If, in the opinion of the Client acting reasonably, the Vendor has failed to complete any Services, or deliver any Deliverables, by any applicable completion, delivery or milestone date set out in the Statement of Work (including any Change Order) or established by mutual agreement pursuant to the Statement of Work, the Client may hold back up to 15 percent of the Maximum Price for the Statement of Work until the Vendor completes such Services, or delivers such Deliverables, as the case may be. The holdback will be released no more than 45 calendar days after completion of such Services or delivery of such Deliverables, as the case may be. The Client may specify additional holdback rights in a Statement of Work.

14.5 No Expenses or Additional Charges

There shall be no other charges payable by the Client to the Vendor under any Statement of Work other than (a) the amount(s) expressly set out in the Statement of Work or Change Order, (b) the harmonized sales tax (HST) if the provision of Deliverables and Services is subject to it, and (c) any travel and accommodation expenses pre-approved in accordance with Section 13.4 (Travel, Meal and Accommodation Expenses).

14.6 Payment of Taxes and Duties

The Vendor shall pay or charge and remit, as required, all applicable taxes, including excise taxes incurred by or on the Vendor's behalf with respect to the Statement of Work.

14.7 Withholding Tax

The Client shall withhold any applicable withholding tax from amounts due and owing to the Vendor under the Statement of Work and shall remit it to the appropriate government in accordance with applicable tax laws.

14.8 Interest on Late Payment

In no event shall payment be in arrears prior to the expiry of 45 Business Days after delivery of an invoice that conforms to the requirements of the Statement of Work and the expiry of 45 Business Days after the date that the invoice is due and payable. If a payment is in arrears through no fault of the Vendor, the interest charged by the Vendor, if any, for any late payment is subject to required approvals under the Financial Administration Act, R.S.O. c. F-12 and shall not exceed the pre-judgment interest rate established under subsection 127(2) of the Courts of Justice Act, R.S.O. 1990, C45, in effect on the date that the payment went into arrears.

14.9 Document Retention and Audit

During and for seven (7) years after the Term of each Statement of Work, the Vendor shall, at its cost (a) maintain all necessary records to substantiate (i) all charges and payments under each Statement of Work and (ii) that the Services were provided in accordance with each Statement of Work and with Requirements of Law; and (b) permit and assist MGS and each Client in conducting audits of the operations of the Vendor to verify (i) and (ii) above. MGS or a Client shall provide the Vendor with at least ten (10) Business Days prior notice of its requirement for such audit.

14.10 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 15. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSING

15.1 General

Attachment D (Vendor/Client Ownership Provisions) or Attachment E (Client Ownership Provisions), but not both, shall apply to each Statement of Work. If the Statement of Work specifies that Attachment D applies to the Statement of Work, then Attachment E does not apply to the Statement of Work. If the Statement of Work specifies that Attachment E applies to the Statement of Work, then Attachment D does not apply to the Statement of Work.

15.2 Default Vendor Ownership Model

If the Statement of Work is silent about whether Attachment D (Vendor/Client Ownership Provisions) or Attachment E (Client Ownership Provisions) applies to it, then the provisions of Attachment D (Vendor/Client Ownership Provisions) shall apply to the Statement of Work.

[See Attachment D (Vendor/Client Ownership Provisions) and Attachment E (Client Ownership Provisions) for Article 16 to Article 25]

ARTICLE 26 OPS CONFIDENTIAL INFORMATION

26.1 Confidentiality

During and following the Term of this Master Agreement and the Project Term of each Statement of Work, the Vendor shall keep all OPS Confidential Information confidential. The Vendor shall keep all OPS Confidential Information secure and shall provide or return OPS Confidential Information to the Client on demand and, in any event, shall provide or return all OPS Confidential Information to the Client before the termination or expiry of the Statement of Work, with no copy or portion kept by the Vendor in any form or on any media. The Vendor shall limit the disclosure of OPS Confidential Information to only those of its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors who have been specifically authorized to have such disclosure and who have a need to know it in order to respond to a request for service pursuant to this Master Agreement or to perform the Services under the Statement of Work. The Vendor agrees that the Vendor, its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors shall not directly or indirectly disclose, destroy, exploit or use any OPS Confidential Information (except in order to respond to a request for services pursuant to this Master Agreement or to perform the Services, or except if required by order of a court or tribunal), without first obtaining:

(a) the written consent of the Client, and

(b) in respect of any OPS Confidential Information about any third party, the written consent of such third party.

26.2 Restrictions on Copying

The Vendor shall not copy any OPS Confidential Information, in whole or in part, unless necessary or materially advantageous for the performance of the Services. On each copy made by the Vendor, the Vendor must reproduce all notices which appear on the original.

26.3 Injunctive and Other Relief

The Vendor acknowledges that breach of any provisions of this Article may cause irreparable harm to Ontario, the OPS Entity or any third party to whom Ontario or the OPS Entity owes a duty of confidence, and that the injury to Ontario, the OPS Entity or any third party, may be difficult to calculate and inadequately compensable in damages. The Vendor agrees that Ontario and the OPS Entity and any third party to whom Ontario or the OPS Entity owes a duty of confidence are each entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) and any other remedy for any actual or potential breach of the provisions of this Article.

26.4 Notice and Protective Order

If the Vendor or any of its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors become legally compelled to disclose any OPS Confidential Information, the Vendor will provide Ontario or the OPS Entity, as appropriate, with prompt notice to that effect to allow Ontario or the OPS Entity to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with Ontario and/or the OPS Entity and their respective legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Vendor will disclose only that portion of OPS Confidential Information which the Vendor is legally compelled to disclose, only to such person or persons to which the Vendor is legally compelled to disclose, and the Vendor shall provide notice to each such recipient, in co-operation with legal counsel for Ontario and/or the OPS Entity, that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions substantially similar to and not materially less protective than those in this Master Agreement, and not materially less protective than any more protective terms and conditions set out the Statement of Work, and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

26.5 Vendor's Directors, Officers, Personnel, Agents, Partners, Affiliates, Volunteers and Subcontractors

The Vendor shall advise its directors, officers, Personnel, agents, partners, affiliates, volunteers and Subcontractors of the requirements of this Article and take appropriate action to ensure their compliance with its terms. In addition to any other liabilities of the Vendor pursuant to this Master Agreement or the Statement of Work or otherwise at law or in equity, the Vendor shall be liable for any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees, and reasonable disbursements), causes of action, and Proceedings arising from any non-compliance with this Article by the Vendor's directors, officers, Personnel, agents, partners, affiliates, volunteers and Subcontractors. The Vendor understands and agrees that, prior to allowing any of them to perform any Services under a Statement of Work, the Vendor shall cause its directors, officers, Personnel, agents, partners, affiliates, volunteers and Subcontractors to execute a confidentiality agreement in the form set out in Attachment H and the Vendor shall deliver it to the Client.

26.6 Conflict with Privacy Provisions

If a conflict or inconsistency arises between any provision in this Article and the Privacy Provisions, the Privacy Provisions shall govern.

26.7 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 27 PRIVACY

27.1 Default Privacy Provisions

FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties.

Unless the Parties expressly set out alternative privacy provisions in the Statement of Work, the following provisions shall govern:

The Vendor agrees:

(a) to keep Records secure;

(b) to provide Records to Ontario or the OPS Entities within seven (7) calendar days of being directed to do so by Ontario or the OPS Entity for any reason including an access request or privacy issue;

(c) not to access any Personal Information unless Ontario or the OPS Entity determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Services;

(d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by Ontario or the OPS Entity;

(e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;

(f) to restrict access to Personal Information to those of its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors who have a need to know it for the purpose of providing the Services and who have been specifically authorized by the MGS Representative or the Client Representative to have such access for the purpose of providing the Services;

(g) to implement other specific security measures that in the reasonable opinion of Ontario or the OPS Entity would improve the adequacy and effectiveness of the Vendor's measures to ensure the security and integrity of Personal Information and Records generally;

(h) that any confidential information supplied to Ontario or the OPS Entity may be disclosed by Ontario or the OPS Entity where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding; and

(i) any provision set out above that is not expressly replaced in a Statement of Work with an alternative provision shall remain in full force and effect.

27.2 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 28 CONFIDENTIAL VENDOR INFORMATION

28.1 Confidentiality

(a) Confidentiality - Master Agreement - During and following the Term of this Master Agreement, Ontario shall keep confidential all Confidential Vendor Information that comes into the knowledge or possession of Ontario under this Master Agreement, subject to: (i) the Privacy Provisions; and (ii) any right of Ontario under this Master Agreement to disclose. Ontario agrees to limit the disclosure of Confidential Vendor Information which comes into the knowledge or possession of Ontario under this Master Agreement to only: (1) those of its advisors, personnel and subcontractors, (2) those OPS Entities, offices of officers of the Legislative Assembly or of the Ontario Legislature, and Provincially Funded Organizations, and their respective advisors, staff and subcontractors, and (3) those members of the Executive Council of Ontario, and their advisors, staff and subcontractors; who have a need to know it and who have been specifically authorized to have such disclosure. Ontario agrees that: (A) it and its advisors, personnel and subcontractors, (B) those OPS Entities, offices of officers of the Legislative Assembly or of the Ontario Legislature, and Provincially Funded Organizations, and their respective advisors, staff and subcontractors; and (C) those members of the Executive Council of Ontario, and their advisors, staff and subcontractors; shall not directly or indirectly disclose, destroy, exploit or use any Confidential Vendor Information (except to enable Ontario to exercise its rights under this Master Agreement or any Statement of Work, or except if required by order of a court or tribunal), without first obtaining:

(i) the written consent of the Vendor, and

(ii) in respect of any Confidential Vendor Information about any third party, the written consent of such third party.

(b) Confidentiality - Request for Services - In connection with a request for services issued pursuant to this Master Agreement, the Issuer shall keep confidential, in accordance with the terms and conditions of the request for services, all Confidential Vendor Information that comes into the knowledge, possession or control of the Issuer or any contractor or subcontractor at any tier of the Issuer.

(c) Confidentiality - Statements of Work – During and following the Term of each Statement of Work entered into by the Client, the Client shall keep confidential all Confidential Vendor Information that comes into the knowledge, possession or control of the Client or its Subcontractors in connection with the Statement of Work, subject to: (i) the Privacy Provision; or (ii) any right of the Client under the Statement of Work, to disclose. The Client agrees to limit the disclosure of Confidential Vendor Information which comes into the knowledge or possession of the Client in connection with the Statement of Work to only: (1) those of its

advisors, personnel and subcontractors, (2) Ontario and those of its advisors, personnel and subcontractors; (3) those OPS Entities, offices of officers of the Legislative Assembly or of the Ontario Legislature, and Provincially Funded Organizations, and their respective advisors, staff and subcontractors, and (4) those members of the Executive Council of Ontario, and their advisors, staff and subcontractors; who have a need to know it and who have been specifically authorized to have such disclosure. The Client agrees that: (A) it and its advisors, personnel and subcontractors, (B) Ontario and those of its advisors, personnel and subcontractors; (C) those OPS Entities, offices of officers of the Legislative Assembly or of the Ontario Legislature, and Provincially Funded Organizations, and their respective advisors, staff and subcontractors; and (D) those members of the Executive Council of Ontario, and their advisors, staff and subcontractors; shall not directly or indirectly disclose, destroy, exploit or use any Confidential Vendor Information (except to enable the Client to exercise its rights under this Master Agreement or any Statement of Work, or except if required by order of a court or tribunal), without first obtaining:

(i) the written consent of the Vendor, and

(ii) in respect of any Confidential Vendor Information about any third party, the written consent of such third party.

For certainty and without limiting the exclusion of the Statement of Work itself as part of the definition of "Confidential Vendor Information", the Statement of Work is not considered the confidential or proprietary information of the Vendor and it and its contents may be publicly disclosed without notice and without the prior consent of the Vendor.

(d) Limitation - Despite anything to the contrary in this Master Agreement, the Vendor and Ontario agree that: (i) Ontario shall have no obligation to control, and no liability to the Vendor for failure to control, any Confidential Vendor Information that is received by, or is in the knowledge, possession or control of, any OPS Entity, or any contractor or subcontractor at any tier of any OPS Entity: (A) in connection with any request for service issued by any OPS Entity; or (B) under any Statement of Work; and (ii) for certainty, Ontario shall have no obligation or liability to the Vendor for any breach of this Article 28 (Confidential Vendor Information) to the extent that Ontario does not have knowledge or possession of the relevant Confidential Vendor Information prior to the breach.

28.2 Restrictions on Copying

(a) Restrictions on Copying - Master Agreement - Ontario shall not copy, in whole or in part, any Confidential Vendor Information that comes into the knowledge or possession of Ontario under this Master Agreement, unless necessary or materially advantageous to enable Ontario to exercise its rights under this Master Agreement. On each copy made by Ontario, Ontario must reproduce all notices which appear on the original.

(b) Restrictions on Copying – Request for Services Process - In connection with a request for services issued pursuant to this Master Agreement, the Issuer shall not copy, in whole or in part, any Confidential Vendor Information that comes into the knowledge, possession or control of the Issuer unless necessary or materially advantageous to enable the Issuer to exercise its rights in accordance with the terms and conditions of the request for services. On each copy made by the Issuer, the Issuer must reproduce all notices which appear on the original.

(c) Restrictions on Copying - Statements of Work - The Client shall not copy, in whole or in part, any Confidential Vendor Information that comes into the knowledge, possession or control of the Client in connection with any Statement of Work entered into by the Client unless necessary or materially advantageous to enable the Client to exercise its rights under any Statement of Work entered into by the Client. On each copy made by the Client, the Client must reproduce all notices which appear on the original.

28.3 Declaratory Order and Other Relief

Ontario acknowledges, and it is a term of each Statement of Work that the Client acknowledges, that breach of any provisions of this Article may cause irreparable harm to the Vendor or to any third party to whom the Vendor owes a duty of confidence, and that the injury to the Vendor or to any third party may be difficult to calculate and inadequately compensable in damages. Ontario agrees, and it is a term of each Statement of Work that the Client agrees, that the Vendor is entitled to obtain an order declaratory of the rights of the Parties (without proving any damage sustained by it or by any third party) or any other remedy available at law against any actual or potential breach of the provisions of this Article.

28.4 Conflict with Privacy Provisions

If a conflict or an inconsistency arises between any provision in this Article and the Privacy Provisions, the Privacy Provisions shall govern.

28.5 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 29 REPRESENTATIONS, WARRANTIES AND COVENANTS AS TO THIS MASTER AGREEMENT

29.1 Representations and Warranties of the Vendor

The Vendor makes the following representations and warranties to Ontario as of the date of execution of this Master Agreement, and acknowledges that Ontario is relying upon them:

(a) the Vendor is duly incorporated, or, if a partnership, formed, and validly subsisting under the laws of its governing jurisdiction with full power, right and authority to enter into this Master Agreement, and to perform its obligations under this Master Agreement;

(b) the individual executing this Master Agreement on behalf of the Vendor is duly authorized to do so;

(c) this Master Agreement constitutes a legal, valid and binding agreement of the Vendor enforceable in accordance with its terms;

(d) there is no agreement with any other Person which would in any way interfere with the rights of Ontario under this Master Agreement; and

(e) to the extent that any right, title or interest in or to any Deliverables or Intellectual Property Rights vests in Ontario, upon such vesting all such rights, title and interest will be transferred to Ontario free and clear of any Encumbrances.

Throughout the Term of this Master Agreement, the Vendor covenants to take any actions required to ensure that the foregoing representations and warranties continue to be true and covenants not to take any actions that would cause any of the foregoing representations and warranties not to be true, and acknowledges that Ontario and OPS Entities are relying upon such covenants.

29.2 Representations and Warranties of Ontario

Ontario makes the following representations and warranties to the Vendor as of the date of execution of this Master Agreement, and acknowledges that the Vendor is relying upon them:

(a) the execution and delivery of this Master Agreement has been duly authorized; and

(b) this Master Agreement constitutes a legal, valid and binding agreement of Ontario enforceable in accordance with its terms.

29.3 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work

ARTICLE 30 REPRESENTATIONS, WARRANTIES AND COVENANTS AS TO STATEMENTS OF WORK

30.1 Representations and Warranties of the Vendor

In addition to any representations and warranties of the Vendor made under a Statement of Work, the Vendor makes the following representations and warranties to the Client as of the date of execution of each Statement of Work, and acknowledges that the Client is relying upon them:

(a) the Vendor is duly incorporated or, if a partnership, formed, and validly subsisting under the laws of its governing jurisdiction with full power, right and authority to enter into the Statement of Work, and to perform its obligations under the Statement of Work;

(b) the execution, delivery and performance of the Statement of Work by the Vendor have been duly authorized;

(c) the Statement of Work constitutes a legal, valid and binding agreement of the Vendor enforceable in accordance with its terms;

(d) there is no agreement with any other Person which would in any way interfere with the rights of the Client (and, in the case of a Client that is an OPS Entity to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies, also the rights of Ontario) under the Statement of Work;

(e) all Services will be performed: (i) in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) in accordance with, and not in violation of, Requirements of Law;

(f) the Vendor:

(i) has entered into a written agreement, or will have entered into a written agreement prior to the performance of any Services under the Statement of Work, with each of its employees performing Services under the Statement of Work, or has established and published employee policies binding on its employees performing Services under the Statement of Work; or

(ii) has entered into a written agreement, or will enter into a written agreement prior to the performance of any Services under the Statement of Work, with each of its Subcontractors performing Services under the Statement of Work;

which contains the following minimum terms: (1) the employee or Subcontractor, as applicable, irrevocably assigns to the Vendor, to the extent necessary for the Vendor to grant, assign, transfer or otherwise convey to the Client the rights, title or interests in and to the Deliverables in accordance with the terms of this Master Agreement and the Statement of Work, all of its Intellectual Property Rights to work created, developed, generated, prepared or produced in the course of employment or performing its obligations under a contract with the Vendor, as applicable; (2) the employee or Subcontractor, as applicable, irrevocably waives its Moral Rights in favour of the Vendor and the Vendor's assignees in and to any work created by the employee or Subcontractor in the course of employment or performing its obligations under a contract with the Vendor, as applicable; (3) terms and conditions that protect the confidentiality

of the Vendor's confidential information, including any confidential information of the Vendor's customers, on terms that are no less protective as the confidentiality obligations set out in this Master Agreement; and (4) the employee or Subcontractor agrees to promptly do any and all acts and cause to be executed and deliver to the Vendor any and all assignments, documents and instruments relating to the Deliverables, which the Vendor may request at any time or from time to time;

(g) the Vendor has not entered into any arrangement which would in any way restrict the Client's ability (and, in the case of a Client that is an OPS Entity to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies, also Ontario's ability) to exercise the Intellectual Property Rights granted under the Statement of Work;

(h) there are no claims made or Proceedings pending or anticipated relating to the ownership of the Deliverables or any part of the Deliverables;

(i) the Vendor has, or shall obtain, all the rights for it to grant all of the rights and licences that it grants under the Statement of Work;

(j) neither the Deliverables nor the Services shall, to the best of Vendor's knowledge, in any way infringe or violate any Intellectual Property Rights or any other right of any third party including any patents or patent applications;

(k) the right, title or interest in or to any Deliverables or any Intellectual Property Rights that vests in the Client (but, in the case of a Client that is an OPS Entity to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies, that vest in Ontario) in accordance with the terms of this Master Agreement and/or the Statement of Work will, upon such vesting, be transferred to the Client (but, in the case of a Client is an OPS Entity to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies, be transferred to Ontario), free and clear of any Encumbrances;

(l) the Vendor has not entered into any agreement or arrangement that would restrict a Subcontractor from licensing or selling to the Client (and, in the case of a Client that is an OPS Entity to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies, also licensing and selling to Ontario) goods or services relating to the Deliverables on the usual commercial basis and at market prices, for the purpose of installing, integrating, operating, using, maintaining, supporting, developing or modifying any of the Deliverables;

(m) the Vendor shall not provide or incorporate (or permit those for whom it is responsible, including its Subcontractors and Personnel to provide or incorporate) into any Deliverables, or request the Client to consent to the Vendor providing or incorporating into any Deliverables, and shall not use or permit the use in the provision of the Services, any Restrictive Material; and

(n) the media containing any Deliverables shall be new and free from defects in manufacture, materials, and design, and shall function properly under ordinary use for 90 days after receipt.

Throughout the Project Term of each Statement of Work, the Vendor covenants to take any actions required to ensure that the foregoing representations and warranties continue to be true and covenants not to take any actions that would cause any of the foregoing representations and warranties not to be true, and acknowledges that the Client is relying upon such covenants.

30.2 Representations and Warranties of the Client

It is a term of each Statement of Work that the Client makes the following representations and warranties to the Vendor as of the date of execution of each Statement of Work, and acknowledges that the Vendor is relying upon them:

(a) the execution and delivery of the Statement of Work has been duly authorized; and

(b) the Statement of Work constitutes a legal, valid and binding agreement of the Client enforceable in accordance with its terms.

30.3 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work

ARTICLE 31 INDEMNIFICATION

31.1 IP Indemnification

Despite the limitations of liability set out in Article 33 (Limitation of Liability), and except for any liability arising pursuant to the indemnity provided for in Section 31.3 (Confidentiality and Privacy Indemnification), the Vendor shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, for any actual or possible infringement, inducement of infringement, misappropriation or violation of any Intellectual Property Rights or infringement of any Moral Rights arising out of or in connection with:

(a) the Deliverables (including the provision, use or disposal of the Deliverables) or the Services (including the provision or performance of the Services);

(b) the failure of the Vendor, its Subcontractors or the Vendor's Personnel to perform the Vendor's obligations pursuant to Section 18.4 (Waiver of Moral Rights); or

(c) the exercise of any rights, licences or permissions under a Statement of Work by any Indemnified Parties or by any persons authorized in or under the Statement of Work to exercise any such rights, licences or permissions.

If anything in subsection (a) or (c) above or resulting from the failure described in subsection (b) above is held, or is likely, in the reasonable opinion of the Client, to be held to constitute an infringement, inducement of infringement, misappropriation or violation of any Intellectual Property Rights or an infringement of any Moral Rights, or anything in subsection (a) or (c) above or resulting from the failure described in subsection (b) above is enjoined or threatened to be enjoined or held or threatened to be held improper by way of declaration, then without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under this Master Agreement or Statement of Work, or at law or in equity, the Vendor shall also, at its expense, either:

(1) obtain the rights, licences, permissions and waivers as are necessary so that such Deliverables, Services, or exercise of rights, licences or permissions, becomes non-infringing; or

(2) replace or modify the Deliverables or the Services so that the infringing portion no longer infringes (without any loss of quality or functionality) to the Client's satisfaction;

and shall make every reasonable effort to correct the situation with minimal effect upon the operations of the Client. If neither of the foregoing alternatives is reasonably available, the Minister (MGS) may terminate this Master Agreement and the Minister (Client) may terminate all or any part of the Statement of Work without further obligation or liability to the Vendor and, without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under this Master Agreement or the Statement of Work, or at law or in equity, the Vendor shall refund to the Client all amounts paid with respect to such Services or anything supplied that infringes.

31.2 Client Modification

With respect to a Statement of Work, the Vendor shall not have any liability to the Indemnified Parties under Section 31.1 (IP Indemnification) to the extent that any infringement or violation of any Intellectual Property Rights, other than Moral Rights, is caused by further development or modification made by the Client not

authorized by the Vendor to the Newly-Created Materials, Vendor Materials incorporated into any Deliverables, Vendor Work Inventions or Vendor Work Information.

31.3 Confidentiality and Privacy Indemnification

Despite the limitations of liability set out in Article 33 (Limitation of Liability), the Vendor shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted arising out of or in connection with a breach by the Vendor of: (a) its obligations under Article 26 (OPS Confidential Information); or (b) the Privacy Provisions.

31.4 Other Indemnification

Except for any liability arising pursuant to the indemnities provided for in Section 21.3 (Indemnity) (if Attachment E applies to the Statement of Work), 23.3 (Indemnity) (if Attachment D applies to the Statement of Work), 31.1 (IP Indemnification) or 31.3 (Confidentiality and Privacy Indemnification) and subject to the limitation of liability set out in Article 33 (Limitation of Liability), the Vendor shall indemnify and hold harmless the Indemnified Parties from and against all Losses and by whomever made, sustained, brought or prosecuted, arising out of or in connection with anything done or omitted to be done by the Vendor, its Subcontractors or the Vendor's Personnel in the course of the performance of the Vendor's obligations under this Master Agreement or the Statement of Work or otherwise in connection with this Master Agreement or the Statement of Work.

31.5 Notice

The Client shall notify the Vendor in writing of the commencement of any Proceeding referred to in Section 21.3 (Indemnity) (if Attachment E applies to the Statement of Work), 23.3 (Indemnity) (if Attachment D applies to the Statement of Work), 31.1 (IP Indemnification), 31.3 (Confidentiality and Privacy Indemnification), or 31.4 (Other Indemnification).

31.6 Defence

The Vendor shall, at its expense, to the extent requested by the Attorney General of Ontario, participate in or conduct the defence of any Proceedings against any Indemnified Parties referred to in Section 21.3 (Indemnity) (if Attachment E applies to the Statement of Work), 23.3 (Indemnity) (if Attachment D applies to the Statement of Work), 31.1 (IP Indemnification), 31.3 (Confidentiality and Privacy Indemnification), or 31.4 (Other Indemnification), and any negotiations for their settlement. Ontario may elect to participate in or conduct the defence of any such Proceedings by notifying the Vendor in writing of such election without prejudice to any other rights or remedies of Ontario under this Master Agreement or the Statement of Work, at law or in equity. Each party participating in the defence shall do so by actively participating with the other's counsel. No settlement shall be entered into by the Vendor unless it has obtained the prior written approval of the Attorney General of Ontario.

If the Vendor is requested by the Attorney General of Ontario to participate in or conduct the defence of any such Proceedings, Ontario agrees to co-operate with and assist the Vendor to the fullest extent possible in the Proceedings and any related settlement negotiations. If Ontario conducts the defence of any such Proceedings, the Vendor agrees to co-operate with and assist Ontario to the fullest extent possible in the Proceedings and any related settlement negotiations.

Subject to any rights and obligations of the Attorney General of Ontario, any Statement of Work that is entered into by a Client that is an OPS Entity may specify obligations that are the same as or similar to those set out above in this Section 31.6, in respect of the defence of any Proceedings against the Client and its officers, directors, advisors, agents, appointees and employees. If a Statement of Work of that kind is silent, the provisions of this Section shall apply to it, except that – and subject to any rights and obligations of the Attorney General of Ontario – "Attorney General of Ontario" shall be replaced by "Client", and "Ontario" shall be replaced by "the Client".

31.7 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 32 INSURANCE

32.1 General

Without limiting any other provision in this Article, the Vendor shall, at its own expense, put in effect with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent business person would acquire in like circumstances. The Vendor shall maintain such insurance throughout the Term of this Master Agreement and if the Project Term of a Statement of Work extends beyond this Master Agreement Expiry Date, until the Project End Date.

32.2 Commercial General Liability Insurance

The insurance required by Section 32.1 (General) shall include commercial general liability insurance on an occurrence basis to an inclusive limit not less than two million Canadian dollars (C$2,000,000.00) per occurrence of property damage, bodily injury (including death) or personal injury, and which provides the following minimum coverage:

(a) the Indemnified Parties as additional insureds with respect to any liability arising in the course of the performance of the Vendor's obligations under this Master Agreement and each Statement of Work or arising otherwise in connection with this Master Agreement or any Statement of Work;

(b) cross liability;

(c) a contractual liability coverage endorsement;

(d) a products and completed operations endorsement;

(e) a non-owned automobile coverage with blanket contractual endorsement;

(f) an employer’s liability coverage endorsement, if the Vendor is not subject to the WSIA; and

(g) 30 days written notice to Ontario of cancellation, material change or termination.

Additional required coverage or endorsements may be set out in a Statement of Work for that Statement of Work.

32.3 Errors and Omissions Liability Insurance

The insurance required by Section 32.1 (General) shall include errors and omissions liability insurance, insuring liability for errors and omissions in the provision of the Deliverables and/or the performance of or failure to perform the Services, in the amount of not less than two million Canadian dollars (C$2,000,000.00) per claim and in the annual aggregate.

Additional required coverage may be set out in a Statement of Work for that Statement of Work.

32.4 Proof of Insurance

Before the Vendor signs the first Statement of Work under this Master Agreement, the Vendor shall provide to the MGS Representative proof of the insurance required by Sections 32.2 (Commercial General Liability Insurance) and 32.3 (Errors and Omissions Liability Insurance) in the form of valid certificates of insurance that reference this Master Agreement and confirm the coverage set out in this Article. The Vendor shall provide

renewal replacements to the MGS Representative on or before any subsequent policy renewals. Each certificate of insurance and renewal replacement must reference this Master Agreement by name, date and the full legal name of the Parties. Upon the request of the MGS Representative, a copy of each policy shall be made available to the MGS Representative.

32.5 Subcontractors

The Vendor shall ensure that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain and that the Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the Subcontractor's obligations under the subcontract for the provision of the Deliverables.

32.6 Proof of WSIA Coverage

If the Vendor is subject to the WSIA, it shall submit a valid WSIB clearance certificate of WSIA coverage to the MGS Representative before the Vendor signs the first Statement of Work under this Master Agreement. In addition, the Vendor shall, from time to time at the request of the MGS Representative, provide additional WSIB clearance certificates. The Vendor covenants and agrees to pay when due, and to ensure that each of its Subcontractors pays when due, all amounts required to be paid by it and by its Subcontractors, from time to time during the Term of this Master Agreement and the Project Term of each Statement of Work, under the WSIA, failing which the Client shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Statement of Work or otherwise at law or in equity, to pay to the WSIB any amount due pursuant to the WSIA and unpaid by the Vendor or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Vendor pursuant to the Statement of Work together with all costs incurred by the Client in connection therewith.

ARTICLE 33 LIMITATION OF LIABILITY

33.1 Categories of Damages

For the purposes of this Article, direct damages are those damages that fall within the scope of subsection (a) or (b) below, or both:

(a) damages that arise naturally from the breach of the Master Agreement or a Statement of Work or that are reasonably contemplated at the time the Parties enter into this Master Agreement or the Statement of Work as being the probable consequences of breach of this Master Agreement or the Statement of Work, but exclude those damages that, in order to be reasonably contemplated, require knowledge of special circumstances, which are not known to both Parties at the time the Parties enter into this Master Agreement or the Statement of Work;

(b) damages that are reasonably foreseeable as being the probable consequences of a tort that falls within the scope of this Master Agreement or a Statement of Work, subject to any express limitation or negation of the tort duty, or of the right to sue in tort, set out in this Master Agreement or the Statement of Work.

For the purposes of this Article, all damages of any type whatsoever that fall within the scope of this Master Agreement or the Statement of Work, which are not direct damages, are categorized as indirect damages.

33.2 Vendor's Liability for Damages

Subject to Section 33.3 (Vendor's Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury) and Section 33.4 (Exception – Vendor Liability) for which there are no limits on the liability of the Vendor, if circumstances arise where Ontario or the OPS Entity is entitled to recover from the Vendor damages arising in the course of the performance of the Vendor's obligations under a Statement of Work or arising otherwise in connection with the Statement of Work, the Vendor's aggregate liability to Ontario and the OPS Entity for direct damages under the Statement of Work, shall not exceed:

(a) $250,000.00, if the Maximum Price in the Statement of Work is $250,000.00 or less (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work is $250,000.00 or less); or

(b) $750,000.00, if the Maximum Price in the Statement of Work is $750,000.00 or less but more than $250,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work is $750,000.00 or less but more than $250,000.00); or

(c) $2,000,000.00, if the Maximum Price in the Statement of Work is $2,000,000.00 or less but more than $750,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work is $2,000,000.00 or less but more than $750,000.00); or

(d) $5,000,000.00, if the Maximum Price in the Statement of Work is $5,000,000.00 or less but more than $2,000,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work is $5,000,000.00 or less, but more than $2,000,000.00); or

(e) the greater of the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work, if the Maximum Price in the Statement of Work exceeds $5,000,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work exceeds $5,000,000.00).

Subject to Section 33.3 (Vendor's Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury) and Section 33.4 (Exception (Vendor Liability)), the Vendor shall have no liability for indirect damages in respect of the Statement of Work. The Statement of Work may expressly provide that this limitation shall not in any way restrict or limit any indemnities set out in the Statement of Work.

33.3 Vendor's Liability for Property Damage, Bodily Injury (including Death) or Personal Injury

The limitation of liability in Section 33.2 (Vendor's Liability for Damages) shall not apply in respect of damages for any property damage, bodily injury (including death) or personal injury.

33.4 Exception (Vendor Liability)

The limitation of liability in Section 33.2 (Vendor's Liability for Damages) shall not apply where Ontario or the OPS Entity would be entitled to recover from the Vendor under (a) Sections 21.3 (Indemnity) (if Attachment E applies to the Statement of Work), 23.3 (if Attachment D applies to the Statement of Work), 31.1 (IP Indemnification), and 31.3 (Confidentiality and Privacy Indemnification) or any express exceptions in this Master Agreement to Section 33.2 (Vendor's Liability for Damages); (b) any indemnity in the Statement of Work for breach or misappropriation of Intellectual Property Rights, breach of confidentiality or breach of privacy provisions; or (c) any indemnity in the Statement of Work where the Statement of Work expressly provides that the indemnity is not subject to, restricted by or limited by any limitation of liability.

33.5 Ontario and OPS Entities' Liability for Damages

Subject to Section 33.6 (Ontario and OPS Entities' Liability for Property Damage, Bodily Injury (including Death) or Personal Injury) and Section 33.7 (Exception (Ontario and OPS Entities' Liability)) for which there are no limits on the liability of Ontario and the OPS Entity, if circumstances arise where the Vendor is entitled to recover damages from Ontario or the OPS Entity in connection with a Statement of Work, the aggregate liability of Ontario and the OPS Entity to the Vendor for direct damages under the Statement of Work shall not exceed:

(a) $250,000.00, if the Maximum Price in the Statement of Work is $250,000.00 or less (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may

charge the Client or the Client must pay the Vendor under the Statement of Work is $250,000.00 or less); or

(b) $750,000.00, if the Maximum Price in the Statement of Work is $750,000.00 or less but more than $250,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work is $750,000.00 or less, but more than $250,000.00); or

(c) $2,000,000.00, if the Maximum Price in the Statement of Work is $2,000,000.00 or less but more than $750,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work is $2,000,000.00 or less, but more than $750,000.00); or

(d) $5,000,000.00, if the Maximum Price in the Statement of Work is $5,000,000.00 or less but more than $2,000,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work is $5,000,000.00 or less, but more than $2,000,000.00); or

(e) the greater of the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work, if the Maximum Price in the Statement of Work exceeds $5,000,000.00 (or if the Maximum Price is not specified in the Statement of Work but the amount the Vendor may charge the Client or the Client must pay the Vendor under the Statement of Work exceeds $5,000,000.00).

Subject to Section 33.6 (Ontario and OPS Entities' Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury) and Section 33.7 (Exception (Ontario and OPS Entities' Liability)), Ontario and the OPS Entity shall have no liability for indirect damages in respect of the Statement of Work.

33.6 Ontario and OPS Entities' Liability for Property Damage, Bodily Injury (including Death) or Personal Injury

The limitation of liability in Section 33.5 (Ontario and OPS Entities' Liability for Damages) shall not apply in respect of damages for any property damage, bodily injury (including death) or personal injury.

33.7 Exception (Ontario and OPS Entities' Liability)

The limitation of liability in Section 33.5 (Ontario and OPS Entities' Liability for Damages) shall not apply where the Vendor is entitled to recover damages from Ontario or the OPS Entity (a) arising from use, infringement, inducement of infringement or violation of any Intellectual Property Rights or infringement of any Moral Rights in connection with the Statement of Work; or (b) based upon, occasioned by or attributable to breach of Article 28 (Confidential Vendor Information) in connection with the Statement of Work.

33.8 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 34 SUSPENSION

34.1 Suspension

The Minister (MGS), at its discretion, acting reasonably, may temporarily remove the Vendor immediately from the list of qualified vendors of record to which the Vendor was added pursuant to the RFP. For certainty and without limiting the generality of the foregoing, the Minister (MGS) may temporarily remove the Vendor from the list of qualified vendors of record immediately upon the occurrence of the following circumstances:

(a) the Vendor fails to comply with any of the terms of this Master Agreement or of any Statement of Work;

(b) the Vendor is in default under Article 10 (Security Clearance Checks);

(c) any Insolvency Event occurs with respect to the Vendor;

(d) the Vendor breaches any provision in Article 26 (OPS Confidential Information) or any Privacy Provisions;

(e) the Vendor breaches Section 5.6 (Conflict of Interest) or any other conflict of interest provisions applicable to this Master Agreement or any Statement of Work;

(f) the Vendor subcontracts for the provision of part or all of the Services or sells, assigns or transfers its interest in this Master Agreement, a Statement of Work, or any of its obligations under them to any third Person without the prior written approval of the Minister (MGS) or the Minister (Client), as appropriate, except as expressly contemplated and permitted by Section 5.3 (Subcontracting or Assignment);

(g) the Vendor, prior to or after executing this Master Agreement or any Statement of Work, makes a material misrepresentation or omission or provides materially inaccurate information to Ontario or the OPS Entity;

(h) the Vendor undergoes a change in control which, in the sole opinion of Ontario, adversely affects the Vendor's ability to satisfy some or all of its obligations under this Master Agreement or any Statement of Work;

(i) the Vendor undergoes a change in control which, in the sole opinion of the Client, adversely affects the Vendor's ability to satisfy some or all of its obligations under a Statement of Work;

(j) the Vendor is subject to suspension under the Performance Management Process; or

(k) the Vendor, on multiple occasions during the Term of the Master Agreement, replaces or substitutes Personnel prior to or shortly after the Project Start Date of Statements of Work.

34.2 Effect of Suspension

When removed from the list of qualified vendors of record, the Vendor:

(a) is not eligible to receive requests for services or other similar notices from Clients of work under the VOR arrangement nor to be awarded a Statement of Work;

(b) if requested by MGS, shall promptly return all OPS Confidential Information, Records, Personal Information, Ontario Data and Ontario Materials to the Client;

(c) if requested by MGS, shall provide MGS with a report detailing (i) the current state of the provision of the Services by the Vendor at the date of suspension for all current Statements of Work; and (ii) any other information requested by MGS pertaining to the provision of the Services and the performance of current Statements of Work;

(d) if requested by the MGS or the Client, shall comply with its obligations under Section 18.3 (Assignee and Form of Copyright Assignment) and 18.4 (Waiver of Moral Rights);

(e) if requested by MGS or the Client, shall execute such document required to give effect to the suspension; and

(f) shall comply with any other reasonable instructions provided by MGS.

The Minister (MGS) may, at its sole discretion, (i) set a fixed time-period during which the Vendor shall remain removed from the list of qualified vendors of record, (ii) impose conditions that the Vendor must meet in order to be reinstated onto the list of qualified vendors of record, or (iii) both. For certainty, temporary removal of the Vendor from the list of qualified vendors of record does not relieve the Vendor of any of its obligations under this Master Agreement or under each Statement of Work.

ARTICLE 35 TERMINATION OF MASTER AGREEMENT

35.1 Termination of Master Agreement by the Minister (MGS)

The Minister (MGS) may terminate this Master Agreement immediately upon written notice to the Vendor if any of the following events of default occurs:

(a) the Vendor fails to comply with any of the terms of this Master Agreement or of any Statement of Work if that failure continues unremedied for ten (10) Business Days or more after written notice of that failure is given by the Minister (MGS) to the Vendor;

(b) the Vendor is in default under Article 10 (Security Clearance Checks);

(c) any Insolvency Event occurs with respect to the Vendor;

(d) the Vendor breaches any provision in Article 26 (OPS Confidential Information) or any Privacy Provisions;

(e) the Vendor breaches Section 5.6 (Conflict of Interest) or any other conflict of interest provisions applicable to a Statement of Work;

(f) the Vendor subcontracts for the provision of part or all of the Services or sells, assigns or transfers its interest in this Master Agreement or any of its obligations under it to any third Person without the prior written approval of the Minister (MGS) except as expressly contemplated and permitted by Section 5.3 (Subcontracting or Assignment);

(g) the Vendor, prior to or after executing this Master Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to Ontario;

(h) the Vendor undergoes a change in control which, in the sole opinion of Ontario, adversely affects the Vendor's ability to satisfy some or all of its obligations under this Master Agreement or any Statement of Work; or

(i) this Master Agreement is subject to termination under the Performance Management Process.

Any termination of this Master Agreement under this Section is without prejudice to Ontario's right to exercise or pursue any other remedies that may be available to Ontario under this Master Agreement, at law or in equity. All such other remedies shall survive any termination of this Master Agreement and remain in full force and effect thereafter.

35.2 Termination of Master Agreement for Convenience

The Minister (MGS) reserves the right to terminate this Master Agreement at any time, without cause and without penalty, upon sixty (60) calendar days prior written notice to the Vendor.

35.3 Termination of Master Agreement by Vendor on VOR Anniversary Date

The Vendor may, upon providing written notice to the MGS Representative no less than fifteen (15) Business Days prior to a VOR Anniversary Date, terminate this Master Agreement (but not any Statement of Work) effective as at that VOR Anniversary Date. For certainty, termination of this Master Agreement in accordance

with this Section 35.3 does not relieve the Vendor of any of its obligations under this Master Agreement or under each Statement of Work.

35.4 Effect of Expiry or Termination of Master Agreement

Upon termination of this Master Agreement, MGS will remove the Vendor from the list of qualified vendors of record to which the Vendor was added pursuant to the RFP. Despite the expiry or other termination of this Master Agreement for any reason, the terms and conditions of this Master Agreement shall continue to apply to, and shall remain in full force and effect in respect of, each Statement of Work then in effect.

35.5 Obligations on Termination of Master Agreement

Upon termination of this Master Agreement, the Vendor shall, in addition to its other obligations under this Master Agreement and at law:

(a) provide the MGS Representative with a report detailing (i) the current state of the provision of Services by the Vendor under all Statements of Work entered into at any time by the Vendor, up to and including at the date of termination, and (ii) any other information requested by MGS pertaining to the provision of the Services and performance of such Statements of Work;

(b) execute such documentation as may be required by MGS to give effect to the termination of this Master Agreement; and

(c) comply with any other reasonable instructions provided by MGS, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

35.6 Debriefing

Upon the request of MGS following the expiry or earlier termination of this Master Agreement, the Vendor shall attend a debriefing session conducted by MGS where the Vendor will provide MGS with its conclusions and observations about the implementation of this Master Agreement in order to provide MGS with feedback for structuring contracts for similar services in the future.

35.7 Express Rights in Addition to Other Rights

The express rights of termination in this Master Agreement are in addition to and shall in no way limit any rights or remedies of Ontario under this Master Agreement, at law or in equity.

35.8 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 36 TERMINATION OF STATEMENTS OF WORK

36.1 Termination by Minister (Client)

The Minister (Client) may terminate a Statement of Work immediately upon written notice to the Vendor if any of the following events of default occurs:

(a) the Vendor fails to comply with any of the terms of the Statement of Work if that failure continues unremedied for ten (10) Business Days or more after written notice of that failure is given by the Minister (Client) to the Vendor;

(b) the Vendor is in default under Article 10 (Security Clearance Checks);

(c) any Insolvency Event occurs with respect to the Vendor;

(d) the Vendor breaches any provision in Article 26 (OPS Confidential Information) or any Privacy Provisions;

(e) the Vendor breaches Section 5.6 (Conflict of Interest) or any other conflict of interest provisions applicable to a Statement of Work;

(f) the Vendor subcontracts for the provision of part or all of the Services or sells, assigns or transfers its interest in the Statement of Work or any of its obligations under it to any third Person without the prior written approval of the Minister (Client) except as expressly contemplated and permitted by Section 5.3 (Subcontracting or Assignment);

(g) the Vendor, prior to or after executing the Statement of Work, makes a material misrepresentation or omission or provides materially inaccurate information to the Client;

(h) the Vendor undergoes a change in control which, in the sole opinion of the Client, adversely affects the Vendor's ability to satisfy some or all of its obligations under the Statement of Work;

(i) the Client exercises its termination right under Section 8.3 (Completion of Services); or

(j) the Client exercises its termination right under Section 9.4 (Substitution or Replacement Prior to or Shortly After Project Start Date)

Any termination of a Statement of Work under this Section is without prejudice to the Client's right to exercise or pursue any other remedies that may be available to the Client under the Statement of Work, at law or in equity. All such other remedies shall survive any termination of the Statement of Work and remain in full force and effect thereafter.

36.2 Termination for Non-Appropriation of Moneys

This Section only applies to Statements of Work to which Section 11.3 of the Financial Administration Act applies. If the Statement of Work extends into a Fiscal Year subsequent to its execution, continuation of the Statement of Work is conditional upon an appropriation of moneys by the Ontario Legislature sufficient to satisfy payments due under the Statement of Work. If such moneys are not available as a result of: (a) non-appropriation by the Ontario Legislature for the Fiscal Year in which payment becomes due; and (b) the payment being neither charged nor chargeable to an appropriation of the Ontario Legislature for a previous Fiscal Year, the Minister (Client) may terminate the Statement of Work upon giving notice to the Vendor. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

36.3 Termination for Convenience

The Minister (Client) reserves the right to terminate any Statement of Work at any time, without cause and without penalty, upon 30 calendar days prior written notice to the Vendor, or such other number of days as may be expressly prescribed in the Statement of Work.

36.4 Payment of Vendor Upon Termination

If a Statement of Work is terminated pursuant to Section 36.2 (Termination for Non-Appropriation of Moneys) or 36.3 (Termination for Convenience), the Client shall be liable to the Vendor only for payment for Services properly performed and Deliverables delivered to and accepted by the Client up to and including the effective date of the termination, unless the Client and the Vendor agree otherwise in the Statement of Work. For certainty, if a Statement of Work provides that payment will be due and owing upon the meeting of a specified milestone (such as, for example, delivery and/or acceptance of a specified Deliverable) and the effective date of the termination of the Statement of Work passes prior to the specified milestone being met, the Client is not liable to the Vendor for payment for Services performed and/or Deliverables delivered and/or accepted in relation to that specified milestone, unless the Client and the Vendor agree otherwise in the Statement of Work. Termination shall not relieve the Vendor of its warranties and other responsibilities relating to the

accepted Deliverables, the Services performed or money paid. In addition to its other rights of hold back, the Client may hold back payment or set off against any payments owed if the Vendor fails to comply with its obligations on termination.

36.5 Obligations on Termination

Upon termination of a Statement of Work, the Vendor shall, in addition to its other obligations under the Statement of Work and at law:

(a) promptly return all OPS Confidential Information, Records, Personal Information, Ontario Data and Ontario Materials to the Client;

(b) provide the Client with a report detailing (i) the current state of the provision of the Services by the Vendor at the date of termination, and (ii) any other information requested by the Client pertaining to the provision of the Services and performance of the Statement of Work;

(c) comply with its obligations under Section 18.3 (Assignee and Form of Copyright Assignment) and 18.4 (Waiver of Moral Rights);

(d) execute such documentation as may be required by the Client to give effect to the termination of the Statement of Work; and

(e) comply with any other reasonable instructions provided by the Client, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

36.6 Express Rights in Addition to Other Rights

The express rights of termination that apply to a Statement of Work are in addition to and shall in no way limit any rights or remedies of the Client under the Statement of Work, at law or in equity.

36.7 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 37 GENERAL

37.1 Promotion Restrictions - Master Agreement

Any publicity or publications related to this Master Agreement shall be at the sole discretion of MGS. Ontario may, in its sole discretion, acknowledge any Services provided by the Vendor in any such publicity or publication. The Vendor shall not make use of its association with Ontario in relation to this Master Agreement without the prior written consent of MGS. Without limiting the generality of this Section, the Vendor shall not at any time directly or indirectly communicate with the media in relation to this Master Agreement unless it has first obtained the express written authorization to do so by MGS.

37.2 Promotion Restrictions

Statements of Work - Any publicity or publications related to a Statement of Work shall be at the sole discretion of the Client. The Client may, in its sole discretion, acknowledge any Services provided by the Vendor in any such publicity or publication. The Vendor shall not make use of its association with the Client in relation to a Statement of Work without the prior written consent of the Client. Without limiting the generality of this Section, the Vendor shall not, among other things, at any time directly or indirectly communicate with the media in relation to a Statement of Work unless it has first obtained the express written authorization to do so by the Client.

37.3 Disclosure to the OPS

Despite anything to the contrary in this Master Agreement or any Statement of Work, the Vendor consents to the disclosure, and the provision of a copy, of this Master Agreement, each Statement of Work and Change Order (including any amendments to any of them and any related or resulting documents), and of data about the acquisition of Deliverables and Services pursuant to each Statement of Work, at any time and from time to time to the OPS and to the members of the Executive Council of Ontario and their advisors and staff.

37.4 Accessibility Requirements

The Vendor's delivery of the Deliverables shall comply with all applicable requirements, specifications and standards for accessibility established in accordance with the Ontario Human Rights Code (HRC) R.S.O. 1990, CHAPTER H.19, the Ontarians with Disabilities Act, S.O. 2001, CHAPTER 32, and the Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005 c. 11, any regulations made thereto and any direction from MGS or the Client.

[Signatures on next page]

IN WITNESS WHEREOF the parties hereto have executed this Master Agreement as of the date first written above.

HER MAJESTY THE QUEEN in right of Ontario as represented by the Minister of Government Services

Per:

Signature: _____

Name: **Wes Lapish**

Title: **Director, Enterprise Procurement Branch**

Pursuant to delegated authority

«Proponent_Name»

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor

ATTACHMENT A TO MASTER AGREEMENT – SERVICE CATEGORIES AND ROLES

«Proponent_Name» is qualified to provide Services in the following Roles in all Service Categories:

- Role 1: BCP/DRP Specialist
- Role 4: General Consultant
- Role 6: Financial Analyst
- Role 13: Project Manager/Lead …….

The description of all Roles and Service Categories under VOR OSS-00426611 are set out at http://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/Attachments/OSS-00426611-Role-and-ServiceCat-Desc/$FILE/MngmntConsulting-VOR-OSS-00426611-Role-and-ServiceCat-Desc.pdf .

ATTACHMENT B TO MASTER AGREEMENT - FORM OF STATEMENT OF WORK- MINISTRIES

NOTE: THIS NOTE AND ALL INSTRUCTIONS CONTAINED IN THIS FORM ARE INTENDED ONLY AS AIDS AND SHOULD BE DELETED.

Statement of Work for Management Consulting Services

This Statement of Work no. **[Instructions: Insert reference number]** made in duplicate and effective **[Instructions: insert effective date and complete year]**, 20**[Instructions: complete year]**

[Instructions: Insert the legal name of the Vendor] (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by **[Instructions: Identify the minister that will sign the Statement of Work on behalf of Ontario. Insert "the Minister of" and name the applicable ministry, but in the case of the Ministry of the Attorney General, insert "the Attorney General".]** enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **[Instructions: Insert date]** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**[Instructions: Insert amount in Canadian dollars.]**

4. *Project Start Date:* **[Instructions: Insert date.]**

5. *Project End Date:* **[Instructions: Insert date.]**

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   [Instructions: describe the following here or set it out in a separate schedule:

   - **objectives**
   - **scope**
   - **detailed description of services and work to be provided or performed by the Vendor, including a list of tangible deliverables**
   - **results to be achieved**
   - **deliverables to be prepared and delivered by the Vendor**
   - **progress reports, and any other reporting requirements**
   - **project plan, if required**
   - **description of performance criteria and standards (objectives) to be achieved**
   - **measurement methods to be used by the Vendor to monitor and report on its performance**
   - **identify process for approving the replacement of the Vendor's Personnel**
   - **time frames that the Vendor must adhere to**

- **milestones and associated payment schedules**
- **associated documentation, if required**
- **contingency plan**
- **the Vendor's specific responsibilities.]**

7. *Ownership and Licences* - Attachment **[Instructions: Specify Attachment D (Vendor / Client Ownership Provisions) or Attachment E (Client Ownership Provisions).]** of the Master Agreement forms a part of this Statement of Work.

[Instructions: Number the following paragraphs.]

* *Quality Control* - **[Instructions: If the Vendor is required to use any quality control plan or process in the course of doing its work, identify it and set out the particulars here. Otherwise, delete this provision.]**

* *Methodologies* - **[Instructions: If the Vendor is required to use any specific methodology in the course of doing its work, identify it and set out the particulars here. Otherwise, delete this provision.]**

* *Beyond Scope of Services and Deliverables* - The following activities are not within the scope of this Statement of Work: **[Instructions: Identify activities that will not be addressed under this Statement of Work. Otherwise, delete this provision.]**

[Instructions: If the ministry consents to the use of any Subcontractor's Personnel, complete the following table. Otherwise, delete the following consent and table.]

*. *Names and Roles of Vendor's Subcontractors* **-** The Client hereby consents to the use by the Vendor of the Subcontractors, and of the Subcontractors' Personnel, listed below for the particular Roles (including experience levels) specified.

Legal Name of Corporation	**Individual's Legal Name**	**Individual's Role and Experience Level**	**Service Category**

[Instructions: Complete the following table in respect of the Vendor's own Personnel.]

***** *Names and Roles of Vendor's Personnel:*

Individual's Legal Name	Individual's Role and Experience Level	Service Category

* *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

[Instructions: insert address]

or such other address as the Client may from time to time communicate to the Vendor in writing.

* *Billing and Payment Process* - **[Instructions: If the billing and payment process is to differ from that set out in Section 14.2 of the Master Agreement, set out the billing and payment process here. Otherwise, delete this provision.]**

* *Freedom of Information and Protection of Privacy Records* - The following chart lists recorded information that is not in the custody or control of the Client:

The following Records are not in the custody or control of the Client:

* *Communications and Reporting* - The Vendor shall meet with the Client Representative **[Instructions: specify frequency]** during the Project Term to provide status reports or to obtain approval for Deliverables.

* *Knowledge Transfer:*

From	To	Knowledge to be Transferred

[Instructions: Specify how knowledge is to be transferred by the Vendor.]

* *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

* *Client Representative and Receipt of Notices*

Client's address for receipt of notices: **[insert complete mailing address]**

Client Representative: **[insert name and title of individual]**
Telephone number: **[insert area code and number]**
E-mail: **[insert e-mail address]**

Backup Client Representative: **[insert name and title of individual]**
Telephone number: **[insert area code and number]**
E-mail: **[insert e-mail address]**

[Instructions: This provision is optional:]

* *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices: **[insert complete mailing address]**

Vendor Representative: **[insert name and title of individual]**
Telephone number: **[insert area code and number]**
E-mail: **[insert e-mail address]**
Backup Vendor Representative: [insert name and title of individual]
Telephone number: [insert area code and number]
E-mail: [insert e-mail address]

*. *Insurance* – **[Instructions: If additional insurance coverage or amounts or endorsements are required for this specific Statement of Work, identify the additional requirements here.]**

***** *Other Provisions* **– [Instructions: Insert other provisions as required.]**

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **[Instructions: See the instructions on the first page]**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

ATTACHMENT C TO MASTER AGREEMENT - FORM OF STATEMENT OF WORK – OPS ENTITY

NOTE: THIS NOTE AND ALL INSTRUCTIONS CONTAINED IN THIS FORM ARE INTENDED ONLY AS AIDS AND SHOULD BE DELETED.

Statement of Work for Management Consulting Services

This Statement of Work no. **[Instructions: Insert reference number] made in duplicate and effective [Instructions: insert effective date and complete year]**, 20**[Instructions: complete year]**

[Instructions: Insert the legal name of the Vendor] (the "Vendor") and **[Instructions: Insert the legal name of the OPS Entity]** (the "Client") enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **[Insert Date]** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement").

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$ **[Instructions: Insert amount in Canadian dollars.]**

4. *Project Start Date:* **[Instructions: Insert date.]**

5. *Project End Date:* **[Instructions: Insert date.]**

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

[Instructions: describe the following here or set it out in a separate schedule:

- **objectives**
- **scope**
- **detailed description of services and work to be provided or performed by the Vendor, including a list of tangible deliverables**
- **results to be achieved**
- **deliverables to be prepared and delivered by the Vendor**
- **progress reports, and any other reporting requirements**
- **project plan, if required**
- **description of performance criteria and standards (objectives) to be achieved**
- **measurement methods to be used by the Vendor to monitor and report on its performance**
- **identify process for approving the replacement of the Vendor's Personnel**
- **time frames that the Vendor must adhere to**
- **milestones and associated payment schedules**
- **associated documentation, if required**
- **contingency plan**
- **the Vendor's specific responsibilities.]**

7. *Ownership and Licences* - Attachment **[Instructions: Specify Attachment D (Vendor / Client Ownership Provisions) or Attachment E (Client Ownership Provisions).]** of the Master Agreement forms a part of this Statement of Work.

[Instructions: Number the following paragraphs.]

* *Quality Control* - **[Instructions: If the Vendor is required to use any quality control plan or process in the course of doing its work, identify it and set out the particulars here. Otherwise, delete this provision.]**

* *Methodologies* - **[Instructions: If the Vendor is required to use any specific methodology in the course of doing its work, identify it and set out the particulars here. Otherwise, delete this provision.]**

* *Beyond Scope of Services and Deliverables* - The following activities are not within the scope of this Statement of Work: **[Instructions: Identify activities that will not be addressed under this Statement of Work. Otherwise, delete this provision.]**

[Instructions: If the Client consents to the use of any Subcontractor's Personnel, complete the following table. Otherwise, delete the following consent and table.]

* *Names and Roles of Vendor's Subcontractors* - The Client hereby consents to the use by the Vendor of the Subcontractors, and of the Subcontractors' Personnel, listed below for the particular Roles (including experience levels) specified.

Legal Name of Corporation	Individual's Legal Name	Individual's Role and Experience Level	Service Category

[Instructions: Complete the following table in respect of the Vendor's own Personnel.]

*. *Names and Roles of Vendor's Personnel:*

Individual's Legal Name	Individual's Role and Experience Level	Service Category

*. **Invoices** - Invoices for payment of any charges under this Statement of Work shall be sent to:

[Instructions: insert address]

or such other address as the Client may from time to time communicate to the Vendor in writing.

*. *Billing and Payment Process* **- [Instructions: If the billing and payment process is to differ from that set out in Section 14.2 of the Master Agreement, set out the billing and payment process here. Otherwise, delete this provision.]**

***** *Freedom of Information and Protection of Privacy Records* - The following chart lists recorded information that is not in the custody or control of the Client:

The following Records are not in the custody or control of the Client:

* *Communications and Reporting* - **The Vendor shall meet with the Client Representative [Instructions: specify frequency] during the Project Term to provide status reports or to obtain approval for Deliverables.**

* *Knowledge Transfer:*

From	To	Knowledge to be Transferred

[Instructions: Specify how knowledge is to be transferred by the Vendor.]

*. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

[Instructions: Insert the relevant information below:]

* *Client Representative and Receipt of Notices*

Client's address for receipt of notices: **[insert complete mailing address]**

Client Representative: **[insert name and title of individual]**
Telephone number: **[insert area code and number]**
E-mail: **[insert e-mail address]**

Backup Client Representative: **[insert name and title of individual]**
Telephone number: **[insert area code and number]**
E-mail: **[insert e-mail address]**

[Instructions: This provision is optional:]

* *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices: **[insert complete mailing address]**

Vendor Representative: **[insert name and title of individual]**
Telephone number: **[insert area code and number]**
E-mail: **[insert e-mail address]**
Backup Vendor Representative: **[insert name and title of individual]**
Telephone number: **[insert area code and number]**
E-mail: **[insert e-mail address]**

*. *Insurance* – **[Instructions: If additional insurance coverage or amounts or endorsements are required for this specific Statement of Work, identify the additional requirements here.]**

* *Other Provisions* **– [Instructions: Insert other provisions as required.]**

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE OPS ENTITY.]

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

ATTACHMENT D TO MASTER AGREEMENT – VENDOR / CLIENT OWNERSHIP PROVISIONS

1.2 In respect of each Statement of Work to which this Attachment D applies, these words and expressions have these meanings:

"**Competitive Commercialization**" means exploitation of Intellectual Property Rights in Vendor Work Inventions or Vendor Work Information for any commercial advantage in competition with the Vendor with the effect of making a net monetary gain, but does not include: (a) any exploitation by or on behalf of the Client or its sublicensees for the purposes permitted under this Master Agreement or the Statement of Work where the good or service developed or produced through such exploitation is for use by the Client, its sublicensees, Ontario, OPS Entities, offices of an officer of the Legislative Assembly or of the Ontario Legislature, Provincially Funded Organizations, or the public, including any dissemination or distribution in connection with such exploitation, or (b) any dissemination or distribution by or on behalf of the Client or its sublicensees for the purposes permitted under this Master Agreement or the Statement of Work.

"**Confidential Work Information**" means all information that (a) is confidential by its nature or in the circumstances in which it is conceived, developed or produced, and (b) is conceived, developed or produced by one or more of the Personnel of the Vendor in the performance of Work whether with one or more of the Personnel of the Client or not. "Confidential Work Information" includes all Joint Work Inventions, Joint Work Material, Other Work Inventions and Non-Technical Work.

"**Non-Technical Work**" means all Deliverables other than the Vendor Work Inventions, the Vendor Work Information, the Confidential Work Information, the Joint Work Inventions, the Joint Work Material, and the Other Work Inventions. "Non-Technical Work" does not include the Vendor Materials.

"**Other Work Invention**" means any Invention conceived, or conceived and developed, solely or jointly by one or more of the Personnel of the Vendor in the performance of Work, but excludes any Joint Work Invention and any Vendor Work Invention.

"**Vendor Work Information**" means all Technical Information developed or produced by the Vendor or its Subcontractors in the performance of Work under a Statement of Work, but excludes any contribution made by one or more of the Personnel of the Vendor to any Joint Work Material; and also excludes all Client Work Information.

"**Vendor Work Invention**" means any Invention conceived, or conceived and developed, solely or jointly by one or more of the Personnel of the Vendor or its Subcontractor in the course of developing or producing Vendor Work Information, but excludes any Joint Work Invention.

"**Vendor Work Product**" means all Deliverables that are created, developed, generated, prepared or produced by one or more of the Personnel of the Vendor in the performance of Work, including all Joint Work Material and Non-Technical Work.

"**Work Patent Application**" means a patent application on a Vendor Work Invention filed by or on behalf of the Vendor or any of its assignees, related entities or Subcontractors or any of their advisors, agents or Personnel, in Canada or in any other country or international patent office.

ARTICLE 16. LICENCE TO RIGHTS IN VENDOR WORK INVENTIONS AND VENDOR WORK INFORMATION

16.1 Licence to Client

It is a provision of each Statement of Work that the Vendor hereby grants to the Client a non-exclusive, perpetual, irrevocable, world-wide, fully paid-up, royalty-free licence to exercise all Intellectual Property Rights and every other right, title and interest in the Vendor Work Inventions and Vendor Work Information, and under each patent issued as a result of a Work Patent Application, in any way and for any purpose whatsoever except Competitive Commercialization, and to have or permit others to do so. Solely by way of example, the licence granted to the Client above includes the right to use, reproduce, produce any translation, and improve, and

includes the right to sublicense to Ontario, OPS Entities, offices of an officer of the Legislative Assembly or of the Ontario Legislature, Provincially Funded Organizations, other governments and their agencies, and other public bodies.

The licence rights to the Vendor Work Inventions and Vendor Work Information shall arise immediately, as and when they, or any part of them, are conceived, created, developed or modified, generated, prepared or produced. The licence set out in this Section is non-transferable by the Client except that: (1) if the Client is Ontario, the Client may transfer the licence to a Permitted OPS Assignee; and (2) if the Client is an OPS Entity, the Client may transfer the licence to Ontario or, where such transfer is necessitated by outsourcing, privatizing, partnering or similar activity, to a non-governmental entity.

16.2 Third-Party Contractors

The Vendor acknowledges that, at any time, the Client may wish to enter into contracts with one or more third parties, whether by a competitive process or not, to exercise the licence set out in Section 16.1. Solely by way of example, such contracts may be with non-governmental entities for the adaptation, audit, communication, correction, development, enhancement, improvement, inspection, modification, operation, overhaul, recording, reproduction, revision, storage, support, translation or use of any or all of the Vendor Work Inventions and Vendor Work Information. Without restricting Section 16.1, the Vendor agrees that the Client's licence in Section 16.1 includes the right to disclose the Vendor Work Inventions and Vendor Work Information to such third parties, including actual and potential proponents for such contracts, and to sublicense or otherwise authorize the use of the Vendor Work Inventions and Vendor Work Information by any third parties engaged by the Client solely to carry out any such contracts. The Client shall require actual and potential proponents and such third parties not to use or disclose any Vendor Work Inventions or Vendor Work Information except as may be necessary to bid for or to carry out any such contracts or except if required by order of a court or tribunal.

16.3 Title to Improvements and Modifications

All Intellectual Property Rights arising from any further development or modification of the Vendor Work Inventions and Vendor Work Information that is conceived, developed, effected or first reduced to practice by or for the Client in the exercise of the licence set out in Section 16.1 shall vest in the Client, or as the Client directs, and shall not vest in the Vendor, its Personnel or Subcontractors except pursuant to a subsequent written contract.

16.4 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work

ARTICLE 17. OWNERSHIP OF RIGHTS

17.1 Vendor's Ownership of Rights in Vendor Work Inventions and Vendor Work Information

Without affecting any Intellectual Property Rights or other interests in or to Ontario Data, and subject to Article 16, Section 17.2, Section 17.6, Article 18, Article 19, Article 24, all Intellectual Property Rights in the Vendor Work Inventions and Vendor Work Information shall immediately, as and when they come into existence, vest in and remain the property of the Vendor. The Client shall not have any right in or to the Vendor's Intellectual Property Rights in the Vendor Work Inventions and Vendor Work Information except any right that may be granted in writing by the Vendor.

17.2 Pre-Existing Intellectual Property Rights

All Intellectual Property Rights existing immediately prior to the Project Start Date, and all rights to Inventions first conceived, developed or reduced to practice prior to such date, shall be retained by each Party and each third party that owned such rights immediately prior to such date.

17.3 Disclosure to Client

The Vendor shall promptly report and fully disclose in writing to the Client all Confidential Work Information, Joint Work Inventions, Joint Work Material, Vendor Work Inventions, Vendor Work Information, Non-Technical Work, Other Work Inventions, and all contributions made by the Personnel of the Vendor to any Joint Work Inventions, including copies of all written disclosures submitted to the Vendor pertaining to them. The Vendor's disclosure shall include a description of the specific components in sufficient detail to permit the Client to clearly identify such components and to distinguish them from the Vendor Materials and the Ontario Materials. Disclosure of Vendor Work Inventions, Other Work Inventions and Joint Work Inventions shall be on the form set out in Attachment I. In any event, the Vendor shall make such disclosure not later than the time of completion of the Services or such earlier time as the Client or the Statement of Work may require.

17.4 Audit Rights

During the Project Term and for seven (7) years following the termination or expiry of each Statement of Work, the Client shall have the right to examine and make copies of all records and supporting data of the Vendor which the Client reasonably deems pertinent to the identification of Confidential Work Information, Joint Work Material, Vendor Work Inventions, Vendor Work Information, Non-Technical Work, Other Work Inventions, or any contribution made by one or more of the Personnel of the Vendor to any Joint Work Invention, upon reasonable notice and with no more than minimal disruption to the Vendor's ongoing operations, and the Vendor shall, at its own cost, retain and maintain in an organised, accessible mode, all such records and supporting data for such period.

17.5 Ownership of Tangible Materials

Regardless of the ownership of any Intellectual Property Rights in any Deliverables, the Client shall own, and have unrestricted ownership rights in, all tangible materials as and when delivered by the Vendor to the Client in connection with the Statement of Work. The Vendor hereby irrevocably assigns, sells and transfers, and it shall be a term of the Statement of Work that the Vendor irrevocably assigns, sells and transfers, all right, title and interest in and to such tangible materials to the Client at no additional cost as and when delivered. The Vendor shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the Client any and all assignments, documents and instruments that the Client may reasonably request at any time or from time to time to carry out the intent of this Section.

17.6 Vendor Trademarks and Designations

Despite any other provisions of this Master Agreement, nothing in this Master Agreement or in a Statement of Work or the performance of the Statement of Work shall grant to the Client any right, title, interest or licence in or to the names, trade names, logos, trade dress, or other trademarks or designations of the Vendor, its Subcontractors or third-party licensors, except as expressly stated in the Statement of Work.

17.7 IP Notices

Except to the extent the Vendor is required to convey to the Client all of the Intellectual Property Rights in the Vendor Work Inventions and the Vendor Work Information in accordance with Section 18.1, the Client shall not, without the prior written consent of the Vendor which shall not be unreasonably withheld, remove any intellectual property notices of the Vendor or of the Vendor’s Subcontractors on any Vendor Work Information.

17.8 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 18. ASSIGNMENT TO ONTARIO AND OPS ENTITIES

18.1 Assignment on Default

If the Minister (Client) terminates a Statement of Work in whole or in part for default, or if

(a) the Vendor fails to complete the Services,

(b) the Vendor fails to deliver all of the Vendor Work Information to the Client,

(c) the Vendor Work Information do not meet the criteria as described in the Statement of Work, or

(d) the Vendor fails to disclose all of the Vendor Work Inventions, Vendor Work Information, Non-Technical Work, Other Work Inventions, and contributions made by any Personnel of the Vendor to any Joint Work Invention, in accordance with Section 17.3,

the Client may, by notice to the Vendor, require the Vendor to convey to the Client all of the Intellectual Property Rights in the Vendor Work Inventions and Vendor Work Information, including each patent issued as a result of a Work Patent Application or, in the case of a notice based on failure to disclose, all of the Intellectual Property Rights in the Vendor Work Inventions and Vendor Work Information not disclosed including each patent issued as a result of a Work Patent Application on a Vendor Work Invention not disclosed, if such failure to disclose is not cured by the Vendor within ninety (90) days after notice by the Client. In the case of any notice under this Section, the rights to be conveyed shall include the Intellectual Property Rights in any Vendor Work Inventions and Vendor Work Information that have vested or are to vest in a Subcontractor.

18.2 Assignment by Personnel, Subcontractors and Others

To give effect to Section 18.1, to the extent that any right, title or interest or any Intellectual Property Rights in or to any Vendor Work Inventions and Vendor Work Information vest, by operation of law or otherwise, in any of the Vendor's directors, officers, Personnel, advisors, agents, partners, affiliates, volunteers, Subcontractors, suppliers or others for whom the Vendor is responsible at law, the Vendor shall cause each of them to assign and transfer to the Client at no cost all of such right, title and interest and all of such Intellectual Property Rights other than any Intellectual Property Rights or interests in Intellectual Property Rights that came into existence prior to the Project Start Date.

18.3 Assignee and Form of Copyright Assignment

Written assignments of any Intellectual Property Rights pursuant to a Statement of Work: (a) to Ontario shall be to "Her Majesty the Queen in right of Ontario", but written assignments of any copyright shall be to the "Queen's Printer for Ontario" in the form set out in Attachment F, or in such form that is satisfactory to the Client where the assignor is not a corporation; and (b) to the OPS Entity shall be in the name of the OPS Entity and, where the Intellectual Property Right is copyright, the written assignment of copyright shall be in the form set out in Attachment F, or in such form that is satisfactory to the Client where the assignor is not a corporation. At the completion of the Services under each Statement of Work or upon the termination of the Statement of Work, the Vendor shall provide to the Client an original, executed assignment of copyright in the form set out in Attachment F, as modified as necessary as set out above.

18.4 Waiver of Moral Rights

The Vendor acknowledges and agrees that all Moral Rights with respect to the Deliverables under each applicable Statement of Work shall be waived irrevocably and without restriction by each of its Personnel in favour of Her Majesty the Queen in right of Ontario and all of its ministries, other administrative units over which ministers of Ontario preside, including its agencies, boards, commissions and Crown corporations, all offices of the officers of the Legislative Assembly or of the Ontario Legislature, OPS Entities, and all sublicenses and assignees, and all persons authorized at any time to use the Deliverables. At the completion of the Services under each Statement of Work or upon the termination of the Statement of Work, the Vendor shall obtain from

each of its Personnel an original, executed waiver of Moral Rights in the form attached as Attachment G (Waiver of Moral Rights Form) and shall deliver such waiver to the Client upon request of the Client.

18.5 Invention Disclosure

Prior to allowing any Person to perform Services under the Statement of Work, the Vendor shall, by written agreement, require such Person to agree,

(a) to promptly report and fully disclose in writing to the Vendor each Vendor Work Invention, Joint Work Invention and Other Work Invention, identifying those concepts or ideas thought to be new, useful and unobvious, and indicating whether they are thought to be an improvement on prior art or capable of commercial exploitation; and

(b) upon request, during and after employment, to execute all assignments, documents and instruments necessary or advantageous to file patent applications on Vendor Work Inventions, Joint Work Inventions and Other Work Inventions and to establish Vendor's rights in the Vendor Work Inventions and the Client's rights in the Joint Work Inventions and Other Work Inventions.

18.6 Intellectual Property Rights Applications

To give effect to Section 18.1, the Vendor shall, at the Client's expense, give the Client all reasonable assistance in the preparation and the prosecution of any applications or registrations in any jurisdiction for or of any Intellectual Property Rights on or arising out of the Vendor Work Inventions and Vendor Work Information, including the assistance of the inventors in the case of patent applications on any Vendor Work Inventions.

18.7 Further Assurances

The Vendor shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the Client any and all assignments, documents and instruments relating to the Intellectual Property Rights in the Vendor Work Inventions and Vendor Work Information, which the Client may reasonably request at any time or from time to time to carry out the intent of this Article.

18.8 Power of Attorney

If the Client is unable for any reason whatsoever to secure the Vendor's signature to any document assigning, perfecting, recording or acknowledging the ownership of any Vendor Work Inventions, Vendor Work Information or patent pursuant to Section 18.1, the Vendor hereby irrevocably designates and appoints the Client and its duly authorized officers as its attorneys-in-fact, with full power of substitution, to act for and on behalf of and instead of the Vendor to execute and file any such document and to do all lawfully permitted acts to further the purposes of this Section with the same legal force and effect as if executed by the Vendor.

18.9 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 19. TRANSFERS AND LICENCES BY VENDOR

19.1 Restrictions Before Completion and Disclosure

In respect of a Statement of Work, until the Vendor completes the Services and discloses all of the Vendor Work Inventions and Vendor Work Information in accordance with Section 17.3, the Vendor and its Personnel and Subcontractors shall not, without the prior written permission of the Client, assign, sell, or otherwise transfer title to the Intellectual Property Rights in any Vendor Work Inventions and Vendor Work Information.

19.2 Obligations and Restrictions

In any assignment, sale, transfer or licence of Intellectual Property Rights in Vendor Work Inventions and Vendor Work Information by the Vendor except a sale or licence for end use of a product based on Vendor Work Inventions and Vendor Work Information, the Vendor shall ensure that the other party is aware of and agrees to comply with all of the Vendor's obligations to the Client in relation to Intellectual Property Rights and any restrictions set out in this Master Agreement or any applicable Statement of Work on the use or disposition of Intellectual Property Rights, including the obligation to impose the same obligations and restrictions on any subsequent assignee, purchaser, transferee or licensee.

19.3 Notification

The Vendor shall promptly notify the Client of the name, address and other pertinent information in regard to any such assignee, purchaser, transferee or licensee, and shall ensure that such party is required to do the same with regard to any subsequent assignee, purchaser, transferee or licensee.

19.4 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 20. NOTIFICATION OF WORK PATENT APPLICATIONS AND ISSUED PATENTS

20.1 Notification of Work Patent Applications

The Vendor will notify the Client Representative in writing, in accordance with Section 2.9 (Notices by Prescribed Means), of each Work Patent Application within one month after the Work Patent Application is filed. The notification to the Client Representative shall:

(a) include the filing date, serial number and title of the Work Patent Application;

(b) include a copy of the Work Patent Application (including an English-language version if filed in a language other than English) and all official papers relating to the Work Patent Application;

(c) identify each inventor;

(d) provide particulars of the Statement of Work and specify that the Invention was made in the performance of work under the Statement of Work; and

(e) specify whether any manuscript describing the Invention has been submitted for publication and, if so, provide particulars of its publication or acceptance for publication as known when notified.

20.2 Notification of Resulting Patents

The Vendor will notify the Client Representative in writing, in accordance with Section 2.9 (Notices by Prescribed Means), of the patent number and issue date for each patent issued as a result of a Work Patent Application, within one month after the issuance of the patent.

20.3 Disclosure

The Vendor agrees that, eighteen (18) months after the filing date of a Work Patent Application, the Client may reproduce and disclose all documents furnished pursuant to this Article in connection with such Work Patent Application.

20.4 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 21. VENDOR MATERIALS

21.1 Request for Consent

The Parties acknowledge that from time to time, the Vendor may wish to incorporate Vendor Materials into the Deliverables. Prior to incorporating any Vendor Materials into any Deliverables, the Vendor shall:

(a) fully disclose to the Client in writing all Vendor Materials that the Vendor proposes to incorporate, which shall include a description of the specific components in sufficient detail to permit the Client to clearly identify and to distinguish them from the Vendor Work Product, Non-Technical Work and the Ontario Materials; and

(b) obtain the Client's prior written consent to such incorporation or use, which consent shall be in the sole discretion of the Client and subject to the terms and conditions as agreed to by the Client as set out in the Statement of Work or Change Order.

21.2 Subcontractors

If any applicable Intellectual Property Rights are owned by a Subcontractor or are licensed to the Subcontractor by a related person, the Vendor shall either obtain a licence from that Subcontractor that permits compliance with Sections 21.4, 22.1 and 22.2 or arrange for the Subcontractor to convey directly to the Client the same rights by execution of the form provided for that purpose by the Client, in which case the Vendor shall deliver that form to the Client, duly completed and executed by the Subcontractor, no later than the time of disclosure to the Client of those Vendor Materials.

21.3 Ownership of Vendor Materials

As between the Client and the Vendor, the Vendor shall have and continue to retain all right, title and interest, including all Intellectual Property Rights, in and to all Vendor Materials, except as otherwise set out in this Master Agreement or the Statement of Work. The Client shall not acquire by virtue of this Master Agreement or the Statement of Work any right, title or interest, including any Intellectual Property Rights, in or to any Vendor Materials, except as otherwise set out in this Master Agreement or the Statement of Work.

21.4 Licence to Vendor Materials Incorporated into Any Vendor Work Product

It is a provision of each Statement of Work that the Vendor hereby grants to the Client a non-exclusive, perpetual, irrevocable, world-wide, fully paid-up, royalty-free licence to exercise all Intellectual Property Rights in the Vendor Materials that are incorporated into any Vendor Work Product in any way and for any purpose whatsoever except Restricted Commercialization, and to have or permit others to do so. Solely by way of example, the licence granted to the Client above includes the right to use, reproduce, produce any translation, improve, and disclose, and includes the right to sublicense Ontario (including any and all of its ministries), OPS Entities, offices of an officer of the Legislative Assembly or of the Ontario Legislature, Provincially Funded Organizations, other governments and their agencies and other public bodies.

In this Section 21.4, "Restricted Commercialization" means exploitation of Intellectual Property Rights in Vendor Materials for any commercial advantage in competition with the Vendor with the effect of making a net monetary gain, but does not include: (a) any exploitation by or on behalf of the Client or its sublicensees for the purposes permitted under this Master Agreement or the Statement of Work where the good or service developed or produced through such exploitation is for use by the Client, its sublicensees, Ontario, OPS Entities, offices of an officer of the Legislative Assembly or of the Ontario Legislature, the Provincially Funded Organizations, or the public, including any dissemination or distribution in connection with such exploitation, or (b) any dissemination

or distribution by or on behalf of the Client or its sublicensees for the purposes permitted under this Master Agreement or the Statement of Work.

The licence rights to the Vendor Materials that are incorporated into any Vendor Work Product shall arise immediately, as and when the Vendor Materials, or any part of them, are incorporated into the Vendor Work Product. The licence set out in this Section is non-transferable by the Client except that: (1) if the Client is Ontario, the Client may transfer the licence to a Permitted OPS Assignee; and (2) if the Client is an OPS Entity, the Client may transfer the licence to Ontario.

21.5 Vendor Materials and Third-Party Contractors

The Vendor acknowledges that the Client may wish to enter into contracts with one or more third parties in respect of the licence rights set out in Section 21.4, whether by a competitive process or not. Without restricting the generality of Section 21.4, the Vendor agrees that the licence granted in relation to the Intellectual Property Rights in the Vendor Materials includes the right to disclose the Vendor Materials to such third parties, including actual and potential proponents for such contracts, and to sublicense or otherwise authorize any such third parties engaged to do anything solely on behalf of the Client that the Client may do with the Vendor Materials and the Intellectual Property Rights in the Vendor Materials. Subject to Section 21.4, the Client shall require actual and potential proponents and such third parties not to use or disclose any confidential Vendor Materials except as may be necessary to bid for or to carry out any such contracts or except if required by order of a court or tribunal.

21.6 Title to Improvements and Modifications to Vendor Materials

All Intellectual Property Rights arising from any further development or modification of the Vendor Materials that is conceived, developed, effected or first reduced to practice by or for the Client in the exercise of any licence set out in Section 21.4 shall vest in the Client or as the Client directs, and shall not vest in the Vendor, its Personnel or Subcontractors except pursuant to a subsequent written contract executed by the Client and the Vendor, its Personnel or Subcontractors, as the case may be.

21.7 IP Notices on Vendor Materials

The Client shall not, without the prior written consent of the Vendor, which shall not be unreasonably withheld, remove any intellectual property notices of the Vendor or the Vendor's Subcontractors on any Vendor Materials.

21.8 Third-Party Vendor Materials Incorporated into the Deliverables

In the case of any Third-Party Vendor Materials that are incorporated into the Deliverables, the Client shall be entitled, at its option, to assume from the Vendor all of its rights to such Third-Party Vendor Materials under any licence and other agreements, and the Vendor shall ensure that any such agreements permitting their assignment and transfer to the Client or as the Client directs, and that such assignment and transfer shall be at no charge to the Client but the Client shall be responsible for any ongoing licence or other payments required to be made to any third parties under any such agreements. If such agreement is not acceptable to the Client, the Vendor will use commercially reasonable efforts to facilitate the Client's pursuit of an acceptable agreement with the relevant third party.

21.9 Third-Party Vendor Materials Used Non-Exclusively

In the case of any Third-Party Vendor Materials that are used in connection with the Services performed for the Client but are also used by the Vendor in connection with services provided by it to others or for the internal purposes of the Vendor not connected with this Master Agreement, upon request by the Client, the Vendor shall assist the Client to acquire a licence to such materials or to acquire from some other person a licence to materials that are functionally/substantively equivalent to such materials. Such licence shall contain terms and conditions as are reasonably acceptable to the Client to enable the Client to obtain or to use the Third-Party Vendor Materials or replacements therefor. The Client shall be responsible for any fees payable to the third-party licensor after such acquisition.

21.10 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 22. SPECIFIC THIRD-PARTY SUBLICENSEES AND LICENCE ISSUES

22.1 Provincially Funded Organizations

Without restricting Sections 16.1 or 21.4, the Vendor agrees that licence rights granted under a Statement of Work in relation to the Intellectual Property Rights in the Vendor Work Inventions, and Vendor Work Information, and in the Vendor Materials that are incorporated into any Vendor Work Product, include the right to disclose the Vendor Work Inventions, Vendor Work Information and such Vendor Materials to any Provincially Funded Organizations, and to sublicense or otherwise authorize the Provincially Funded Organization to exercise the licence rights granted under the Statement of Work. Such disclosure of Vendor Work Inventions and Vendor Work Information shall be limited and subject to obligations of confidentiality.

22.2 Third-Party Non-Governmental Entities

Without restricting Sections 16.1, 16.2, 21.4 or 21.5, the Vendor agrees that the licence rights under a Statement of Work in relation to the Intellectual Property Rights in the Vendor Work Inventions and Vendor Work Information, and in the Vendor Materials that are incorporated into any Vendor Work Product, include the right to disclose the Vendor Work Inventions, Vendor Work Information and such Vendor Materials to any third-party non-governmental entities that provide services to or on behalf of the Client as a result of alternative service delivery, backward or forward integration, outsourcing, privatization, partnering, procurement endeavours or similar activity, and to sublicense or otherwise authorize such third-party non-governmental entities to exercise the licence rights granted under the Statement of Work to the extent that they are exercised for or on behalf of the Client. The Client may disclose the Vendor Materials incorporated into any Joint Work Material or Non-Technical Work without restriction to any such third-party non-governmental entities. The Client shall require such third-party non-governmental entities not to use or disclose any Confidential Vendor Materials incorporated into the Vendor Work Inventions or Vendor Work Information, except as may be necessary to provide services as contemplated in this Section.

22.3 Scope of Rights to Inventions and Patents

To the extent necessary for the Client to exercise any licence granted under the Statement of Work, it is a provision of each Statement of Work that the Vendor hereby grants to the Client a licence under any patent now held or later obtained by the Vendor. Such patent licence shall be co-extensive and co-terminus with such licence. Nothing contained in this Master Agreement or any Statement of Work shall be deemed to grant to the Vendor any rights with respect to any Joint Work Invention, Client Work Invention or Other Work Invention. Subject to the foregoing, nothing contained in this Article shall be deemed to grant to the Client any rights with respect to any Invention other than Vendor Work Inventions or with respect to any patent other than a patent issued as a result of a Work Patent Application.

22.4 General

Without limiting any of Sections 16.1, 16.2, 21.4 or 21.5, Ontario's rights under Article 16, Article 21 and this Article:

(a) apply despite any terms to the contrary in any click-wrap licence, documentation, invoice, shrink-wrap licence, Technical Information, web site, or in any other terms or licence attached to or delivered by the Vendor with any Deliverables, except to the extent that the Client has agreed in writing pursuant to subsection (b) of Section 21.1;

(b) include the right to reproduce and use Vendor Work Inventions, Vendor Work Information, and Vendor Materials incorporated into any Vendor Work Product, and any developed or modified

form of them, on any and all computer systems owned, leased or operated by Ontario or the OPS (including OPS Entities) anywhere in the world at any time; and

(c) are in addition to and not in lieu of its rights under any other provisions of this Master Agreement or the Statement of Work.

22.5 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 23. PERSONAL KNOWLEDGE, SKILL AND EXPERTISE

23.1 Personal Knowledge, Skill and Expertise

Each Party understands and agrees that each of the Personnel of the other Party, in connection with the performance of this Master Agreement and a Statement of Work, may acquire Personal Knowledge. Subject to Article 26, Article 28, the Privacy Provisions and any other statute under which Ontario or the OPS Entity has the discretion or obligation not to disclose any records or other information, the use by such Personnel of the other Party of such Personal Knowledge in the ordinary course of their employment with the other Party (including its subsidiaries, its parent, or other subsidiaries of its parent, in the case of the Vendor; and including Ontario, OPS Entities, offices of an officer of the Legislative Assembly or of the Ontario Legislature, or Provincially Funded Organizations, in the case of Ontario or the OPS Entity; and its Subcontractors) does not breach the Statement of Work provided, however, that nothing in this Section grants to any Personnel the right to obtain a patent in respect of any such Personal Knowledge.

23.2 Employee Mobility

Each Party agrees that the other Party's receipt of confidential information as contemplated by a Statement of Work will not create any obligation in any way limiting or restricting the transfer of Personnel within the other Party's organization.

23.3 Indemnity

Despite the limitations of liability set out in Article 33 (Limitation of Liability), the Vendor shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with the use of any Personal Knowledge by the Vendor's Personnel.

23.4 Scope

Nothing in this Article grants or waives any Intellectual Property Rights of either Party or any other person.

23.5 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 24. PROPERTY OF ONTARIO AND THE OPS ENTITIES

24.1 Ownership of Ontario Materials and Ontario Data

The Vendor acknowledges that Ontario, OPS Entities and their respective Subcontractors and third-party licensors shall have and continue to retain all right, title and interest, including all Intellectual Property Rights, in and to all Ontario Materials and Ontario Data, all assets acquired or held by Ontario or the OPS Entity prior to the Project Start Date or during the Project Term of each Statement of Work, and all assets provided by Ontario or the OPS Entity to the Vendor in connection with each Statement of Work. The Vendor shall not acquire by

virtue of this Master Agreement, or any Statement of Work, any right, title or interest, including any Intellectual Property Rights, in or to any Ontario Materials and Ontario Data.

24.2 Ownership of Third-Party Ontario Materials

Nothing in this Master Agreement or any Statement of Work or the performance of any Statement of Work shall grant to the Vendor any right, title or interest in or to any Third-Party Ontario Materials. To the extent any right, title or interest in or to any Third-Party Ontario Materials vests, by operation of law or otherwise, in the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law), the Vendor shall, and hereby does, irrevocably assign, sell and transfer to the Client at no cost all of its right, title and interest in and to all such Third-Party Ontario Materials, and the same shall be deemed to form part of the Ontario Materials.

24.3 Works of Joint Authorship

Subject to Section 17.2 and Section 21.3, if any Vendor Work Product is a work of joint authorship, the copyright in the work of joint authorship shall immediately, as soon as it comes into existence, vest in the Client, and the Vendor and its Subcontractors shall have no right, title or interest in or to it.

24.4 Proscribed Intellectual Property Rights Registrations

The Vendor shall not file any application, and shall not contest any application filed by Ontario or any OPS Entity, in any jurisdiction for the registration of any Intellectual Property Rights arising out of any Ontario Materials, Client Work Information, Client Work Inventions, Joint Work Inventions, Joint Work Material, Non-Technical Work, or Other Work Inventions whether or not such Intellectual Property Rights depend or would depend upon any pre-existing Intellectual Property Rights.

24.5 Collective Works and Compilations

Despite any other provision in this Master Agreement or the Statement of Work, if any Vendor Work Product is a collective work or a compilation:

(a) the Client shall retain its right, title and interest in and to its contribution to such collective work or compilation;

(b) ownership of all right, title and interest in and to the Vendor's and its Subcontractors' contributions to such collective work or compilation shall be governed by Section 17.1; and

(c) the copyright in such collective work or compilation shall immediately, as soon as it comes into existence, vest in the Client, and the Vendor and its Subcontractors shall have no right, title or interest in or to it.

24.6 Client Work Inventions and Client Work Information

The Client retains all of its Intellectual Property Rights and all of its right, title, and interest throughout the world to each Client Work Invention and to all Client Work Information.

24.7 Intellectual Property Rights to Ontario Materials

To the extent any Intellectual Property Rights or any other right, title or interest in or to any Ontario Materials vests, by operation of law or otherwise, in the Vendor (or its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors or others for whom it is responsible at law), the Vendor shall, and hereby does, irrevocably assign, sell and transfer to the Client at no cost all of its Intellectual Property Rights and other right, title and interest in or to all such Ontario Materials.

24.8 Ontario Government Insignia

Nothing in this Master Agreement or any Statement of Work or the performance of any Statement of Work shall grant to the Vendor any right, title or interest in or to any Ontario Government Insignia. The Vendor shall not use any Ontario Government Insignia except where required to perform the Services, and only if it has received the express prior written authority of Ontario to do so.

24.9 Ownership of Rights in Confidential Work Information, Joint Work Inventions, Joint Work Material, Non-Technical Work and Other Work Inventions

Subject to Section 17.2 and Section 17.6, all Intellectual Property Rights in any Confidential Work Information, Joint Work Inventions, Joint Work Material, Non-Technical Work, and Other Work Inventions, shall immediately, as and when they come into existence, vest in and remain the property of the Client. The Vendor shall have no right in or to any such Intellectual Property Rights in the Confidential Work Information, Joint Work Inventions, Joint Work Material, Non-Technical Work and Other Work Inventions, except any right that may be granted in writing by the Client. The Vendor hereby irrevocably assigns, sells and transfers to the Client for no additional consideration: (a) all Intellectual Property Rights and all right, title and interest throughout the world in and to the Confidential Work Information, Joint Work Material, Non-Technical Work, Other Work Inventions, and contributions made by any Personnel of the Vendor to any Joint Work Inventions, other than (i) any Intellectual Property Rights or interests in Intellectual Property Rights that came into existence prior to the Project Start Date, and (ii) any Intellectual Property Rights or interests in Intellectual Property Rights in and to such Confidential Work Information, Joint Work Inventions, Joint Work Material, Non-Technical Work, and Other Work Inventions, assigned, sold and transferred to the Client by the Personnel of the Vendor; and (b) all of the Vendor's right, title and interest in and to each copyright referred to in Section 24.3 and subsection 24.5 (b).

24.10 Assignment by Personnel, Subcontractors and Others

To the extent that any right, title or interest or any Intellectual Property Rights in or to any Confidential Work Information, Joint Work Material, Non-Technical Work, Other Work Inventions or contributions made by any Personnel of the Vendor to any Joint Work Inventions, vest, by operation of law or otherwise, in any of the Vendor's advisors, agents, Personnel, Subcontractors, suppliers or others for whom the Vendor is responsible at law, the Vendor shall cause each of them to assign and transfer to the Client at no cost all of such right, title and interest and all of such Intellectual Property Rights other than any Intellectual Property Rights or interests in Intellectual Property Rights that came into existence prior to the Project Start Date.

24.11 Intellectual Property Rights Applications

The Vendor shall, at the Client's expense, give the Client all reasonable assistance in the preparation and the prosecution of any applications or registrations in any jurisdiction for or of any Intellectual Property Rights on or arising out of any Joint Work Inventions, Joint Work Material, Non-Technical Work, and Other Work Inventions, including the assistance of the inventors in the case of patent applications on any Joint Work Inventions and Other Work Inventions.

24.12 Further Assurances

The Vendor shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the Client any and all assignments, documents and instruments relating to the Intellectual Property Rights in the Confidential Work Information, Joint Work Inventions, Joint Work Material, Non-Technical Work, and Other Work Inventions, which Ontario or the OPS Entity may reasonably request at any time or from time to time to carry out the intent of this Article.

24.13 Power of Attorney

If the Client is unable for any reason whatsoever to secure the Vendor's signature to any document assigning, perfecting, recording or acknowledging the Client's ownership of any Confidential Work Information, Joint Work Inventions, Joint Work Material, Non-Technical Work, or Other Work Inventions, the Vendor hereby irrevocably designates and appoints the Client and its duly authorized officers as its attorneys-in-fact, with full power of

substitution, to act for and on behalf of and instead of the Vendor to execute and file any such document and to do all lawfully permitted acts to further the purposes of this Section with the same legal force and effect as if executed by the Vendor.

24.14 Intellectual Property Notice

The Vendor shall incorporate the following intellectual property notice on all Confidential Work Information, Joint Work Material, Non-Technical Work, Other Work Inventions and contributions made by any Personnel of the Vendor to any Joint Work Inventions, in all forms and however recorded:

(a) where the Client is Ontario, or where the Client is an OPS Entity to which Section 25.1 of this Attachment D applies:

Intellectual Property Notice

© Queen's Printer for Ontario, [Instructions: insert year of publication.].

Her Majesty the Queen in right of Ontario holds intellectual property rights, including rights of confidentiality, in this [Instructions: select one or more, as applicable: documentation / information / material / software].

(b) where the Client is an OPS Entity (except where Section 25.1 of this Attachment D applies):

Intellectual Property Notice

© [Instructions: Insert name of the OPS Entity], [Instructions: insert year of publication.].

[Instructions: Insert name of the OPS Entity] holds intellectual property rights, including rights of confidentiality, in this [Instructions: select one or more, as applicable: documentation / information / material / software].

24.15 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 25. OPS ENTITIES NOT CAPABLE OF HOLDING INTELLECTUAL PROPERTY RIGHTS

25.1 OPS Entities Not Capable of Holding Intellectual Property Rights

Despite any provision in the Master Agreement or any Statement of Work to the contrary, if an OPS Entity is not capable under its constituting instrument to hold Intellectual Property Rights, in respect to each Statement of Work entered into by a Client that is such an OPS Entity, Ontario and the Vendor agree that: (a) any Intellectual Property Rights assigned, sold or transferred to, owned or retained by, or otherwise conveyed to, such OPS Entity as the "Client" under the Statement of Work shall be deemed to be assigned, sold or transferred to, owned or retained by, or otherwise conveyed to, Ontario; (b) any licences granted to such OPS Entity as the "Client" under the Statement of Work shall, in addition to being granted to such OPS Entity, be granted separately to Ontario, subject to the same rights, benefits, obligations and restrictions, except that Ontario may also exercise the licence rights on behalf of such OPS Entity and to have and permit others to do so; and (c) the provisions of this Master Agreement shall apply with the necessary changes to reflect the intention of this Section.

ATTACHMENT E TO MASTER AGREEMENT – CLIENT OWNERSHIP PROVISIONS

1.2 In respect of each Statement of Work to which this Attachment E applies, these words and expressions have these meanings:

"**Confidential Work Information**" means all information that (a) is confidential by its nature or in the circumstances in which it is conceived, developed or produced, and (b) is conceived, developed or produced by one or more of the Personnel of the Vendor in the performance of Work, whether with one or more of the Personnel of the Client or not. "Confidential Work Information" includes all Joint Work Material, Joint Work Inventions and Vendor Work Inventions.

"**Newly-Created Materials**" means the Deliverables (including all components of the Deliverables), but excluding the Vendor Materials.

"**Restricted Commercialization**" means exploitation of Intellectual Property Rights in Vendor Materials, which are incorporated into the Deliverables, for any commercial advantage in competition with the Vendor with the effect of making a net monetary gain, but does not include: (a) any exploitation by or on behalf of the Client or its sublicensees for the purposes permitted under this Master Agreement or the Statement of Work where the good or service developed or produced through such exploitation is for use by the Client, its sublicensees, Ontario, OPS Entities, offices of an officer of the Legislative Assembly or of the Ontario Legislature, Provincially Funded Organizations, or the public, including any dissemination or distribution in connection with such exploitation, or (b) any dissemination or distribution by or on behalf of the Client or its sublicensees for the purposes permitted under this Master Agreement or the Statement of Work.

"**Vendor Work Information**" means: (a) Technical Information, developed or produced by the Vendor or its Subcontractors in the performance of Work under a Statement of Work, developed or produced by the Vendor or its Subcontractors in the performance of Work under that Statement of Work; and (b) any contribution made by one or more of the Personnel of the Vendor to any Joint Work Material; but excludes all Client Work Information.

"**Vendor Work Invention**" means: (a) any Invention conceived, or conceived and developed, solely or jointly by one or more of the Personnel of the Vendor in the performance of Work; and (b) any contribution made by one or more of the Personnel of the Vendor to any Joint Work Invention.

ARTICLE 16. OWNERSHIP OF RIGHTS

16.1 Ownership of Rights in Newly-Created Materials and Inventions

Without affecting any Intellectual Property Rights or other interests in or to Ontario Data, and subject to Section 16.2 and Section 16.5, all Intellectual Property Rights in:

(a) the Newly-Created Materials; and

(b) Vendor Work Inventions and Joint Work Inventions;

shall immediately, as and when they come into existence, vest in and remain the property of the Client. The Vendor shall have no right in or to any such Intellectual Property Rights in the Newly-Created Materials, Vendor Work Inventions and Joint Work Inventions, except any right that may be granted in writing by the Client.

16.2 Pre-Existing Intellectual Property Rights

All Intellectual Property Rights existing immediately prior to the Project Start Date, and all rights to Inventions first conceived, developed or reduced to practice prior to such date, shall be retained by each Party and each third party that owned such rights immediately prior to such date.

16.3 Intellectual Property Notice

The Vendor shall incorporate the following intellectual property notice on all Newly-Created Materials, in all forms and however recorded:

(a) where the Client is Ontario, or where the Client is an OPS Entity to which Section 17.1 of this Attachment E applies:

> **Intellectual Property Notice**
>
> © Queen's Printer for Ontario, [Instructions: insert year of publication.].
>
> Her Majesty the Queen in right of Ontario holds intellectual property rights, including rights of confidentiality, in this [Instructions: select one or more, as applicable: documentation / information / material / software].

(b) where the Client is an OPS Entity (except where Section 17.1 of this Attachment E applies):

> **Intellectual Property Notice**
>
> © [Instructions: Insert name of the OPS Entity], [Instructions: insert year of publication.].
>
> [Instructions: Insert name of the OPS Entity] holds intellectual property rights, including rights of confidentiality, in this [Instructions: select one or more, as applicable: documentation / information / material / software].

16.4 Ownership of Tangible Materials

The Client shall own, and have unrestricted ownership rights in, all tangible materials as and when delivered by the Vendor to the Client in connection with the Statement of Work. The Vendor hereby irrevocably assigns, sells and transfers, and it shall be a term of the Statement of Work that the Vendor irrevocably assigns, sells and transfers, all right, title and interest in and to such tangible materials to the Client at no additional cost as and when delivered. The Vendor shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the Client any and all assignments, documents and instruments that the Client may reasonably request at any time or from time to time to carry out the intent of this Section.

16.5 Vendor Trademarks and Designations

Despite any other provisions of this Master Agreement, nothing in this Master Agreement or in a Statement of Work or the performance of the Statement of Work shall grant to the Client any right, title, interest or licence in or to the names, trade names, logos, trade dress, or other trademarks or designations of the Vendor, its Subcontractors or third-party licensors, except as expressly stated in the Statement of Work.

16.6 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 17. OPS ENTITIES NOT CAPABLE OF HOLDING INTELLECTUAL PROPERTY RIGHTS

17.1 OPS Entities Not Capable of Holding Intellectual Property Rights

Despite any provision in the Master Agreement or any Statement of Work to the contrary, if an OPS Entity is not capable under its constituting instrument to hold Intellectual Property Rights, in respect to each Statement of Work entered into by a Client that is such an OPS Entity, Ontario and the Vendor agree that: (a) any Intellectual Property Rights assigned, sold or transferred to, owned or retained by, or otherwise conveyed to, such OPS

Entity as the “Client” under the Statement of Work shall be deemed to be assigned, sold or transferred to, owned or retained by, or otherwise conveyed to, Ontario; (b) any licences granted to such OPS Entity as the “Client” under the Statement of Work shall, in addition to be granted to such OPS Entity, be granted separately to Ontario, subject to the same rights, benefits, obligations and restrictions, except that Ontario may also exercise the licence rights on behalf of such OPS Entity and to have or permit others to do so; and (c) the provisions of this Master Agreement shall apply with the necessary changes to reflect the intention of this Section.

ARTICLE 18. ASSIGNMENTS OF RIGHTS TO NEWLY-CREATED MATERIALS AND INVENTIONS

18.1 Assignment

The Vendor hereby irrevocably assigns, sells and transfers to the Client, and it shall be a term of each Statement of Work that the Vendor irrevocably assigns, sells and transfers to the Client, for no additional consideration:

(a) all Intellectual Property Rights and all right, title and interest throughout the world in and to:

(i) the Newly-Created Materials; and

(ii) Vendor Work Inventions and Joint Work Inventions; and

(b) all of the Vendor’s right, title and interest in and to each copyright referred to in Section 22.3 and Section 22.5.

18.2 Assignment by Personnel, Subcontractors and Others

To the extent that any right, title or interest or any Intellectual Property Rights in or to any Newly-Created Materials, Vendor Work Inventions and Joint Work Inventions or in or to any copyright referred to in Section 22.3 or subsection 22.5, vest, by operation of law or otherwise, in any of the Vendor's directors, officers, Personnel, advisors, agents, partners, affiliates, volunteers, Subcontractors, suppliers, or others for whom the Vendor is responsible at law, the Vendor shall cause each of them to assign and transfer to the Client at no cost all of such right, title and interest and all of such Intellectual Property Rights.

18.3 Assignee and Form of Copyright Assignment

Written assignments of any Intellectual Property Rights: (a) to Ontario shall be to "Her Majesty the Queen in right of Ontario", but written assignments of any copyright shall be to the "Queen’s Printer for Ontario" in the form set out in Attachment F, and in such form that is satisfactory to the Client where the assignor is not a corporation; or (b) to the OPS Entity shall be in the name of the OPS Entity and, where the Intellectual Property Right is copyright, the written assignment of copyright shall be in the form set out in Attachment F, or in such form that is satisfactory to the Client where the assignor is not a corporation. At the completion of the Services under each Statement of Work or upon the termination of the Statement of Work, the Vendor shall provide to the Client an original, executed assignment of copyright in the form set out in Attachment F, as modified if necessary as set out above.

18.4 Waiver of Moral Rights

The Vendor acknowledges and agrees that all Moral Rights with respect to the Deliverables under each applicable Statement of Work shall be waived irrevocably and without restriction by each of its Personnel in favour of Her Majesty the Queen in right of Ontario and all of its ministries and other administrative units over which ministers of Ontario preside, including its agencies, boards, commissions, and Crown corporations, all offices of the officers of the Legislative Assembly or of the Ontario Legislature, OPS Entities, and all sublicensees and assignees, and all persons authorized at any time to use the Deliverables. At the completion of the Services under each Statement of Work or upon the termination of the Statement of Work, the Vendor shall obtain from each of its Personnel an original, executed waiver of Moral Rights in the form attached as

Attachment G (Waiver of Moral Rights Form) and shall deliver such waiver to the Client upon the request of the Client.

18.5 Invention Disclosure

Prior to allowing any Person to perform Services under the Statement of Work, the Vendor shall, by written agreement, require such Person to agree,

(a) to promptly report and fully disclose in writing to the Vendor each Vendor Work Invention and Joint Work Invention, identifying those concepts or ideas thought to be new, useful and unobvious, and indicating whether they are thought to be an improvement on prior art or capable of commercial exploitation; and

(b) upon request, during and after employment, to execute all assignments, documents and instruments necessary or advantageous to file patent applications on Vendor Work Inventions and Joint Work Inventions and to establish the Client's rights in the Vendor Work Inventions and Joint Work Inventions.

18.6 Disclosure to Client

The Vendor shall promptly report and fully disclose in writing to the Client all Deliverables, as well as all Vendor Work Inventions and Joint Work Inventions. The Vendor's disclosure shall include a description of the specific components of the Deliverables (including all Newly Created Materials (including all Confidential Work Information, Joint Work Materials, Vendor Work Information), Vendor Materials and Ontario Materials) and all contributions made by the Personnel of the Vendor to any Vendor Work Inventions and Joint Work Inventions, including copies of all written disclosures submitted to the Vendor pertaining to them, in sufficient detail to permit the Client to clearly identify each such component and to distinguish them from the other components. Disclosure of Joint Work Inventions and Vendor Work Inventions shall be on the form set out in Attachment I. In any event, the Vendor shall make such disclosure not later than the time of completion of the Services or such earlier time as the Client or the Statement of Work may require.

18.7 Audit Rights

During the Project Term and for seven (7) years following the termination or expiry of each Statement of Work, the Client shall have the right to examine and make copies of all records and supporting data of the Vendor which the Client reasonably deems pertinent to the identification of each component of the Deliverables (including all Newly Created Materials (including all Confidential Work Information, Joint Work Materials, Vendor Work Information), Vendor Materials and Ontario Materials) and all contributions made by the Personnel of the Vendor to any Vendor Work Inventions and Joint Work Inventions, upon reasonable notice and with no more than minimal disruption to the Vendor's ongoing operations, and the Vendor shall, at its own cost, retain and maintain in an organised, accessible mode, all such records and supporting data for such period.

18.8 Intellectual Property Rights Applications

The Vendor shall, at the Client's expense, give the Client all reasonable assistance in the preparation and the prosecution of any applications or registrations in any jurisdiction for or of any Intellectual Property Rights on or arising out of the Newly Created Materials, including Joint Work Inventions and Vendor Work Inventions, including the assistance of the inventors in the case of patent applications on any Vendor Work Inventions and Joint Work Inventions.

18.9 Further Assurances

The Vendor shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the Client any and all assignments, documents and instruments relating to the Intellectual Property Rights in the Newly-Created Materials, Joint Work Inventions and Vendor Work Inventions, which the Client may reasonably request at any time or from time to time to carry out the intent of this Article and Article 16.

18.10 Power of Attorney

If the Client is unable for any reason whatsoever to secure the Vendor's signature to any document assigning, perfecting, recording or acknowledging the Client's ownership of any Newly-Created Materials (including copyright in Joint Work Materials and collective works), Joint Work Inventions, or Vendor Work Inventions, the Vendor hereby irrevocably designates and appoints the Client and its duly authorized officers as its attorneys-in-fact, with full power of substitution, to act for and on behalf of and instead of the Vendor to execute and file any such document and to do all lawfully permitted acts to further the purposes of this Section with the same legal force and effect as if executed by the Vendor.

18.11 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 19. VENDOR MATERIALS

19.1 Request for Consent

The Parties acknowledge that from time to time, the Vendor may wish to incorporate Vendor Materials into the Deliverables .Prior to incorporating any Vendor Materials into any Deliverables, the Vendor shall:

(a) fully disclose to the Client in writing all Vendor Materials that the Vendor proposes to incorporate, which shall include a description of the specific components in sufficient detail to permit the Client to clearly identify and to distinguish them from the Newly-Created Materials and the Ontario Materials; and

(b) obtain the Client's prior written consent to such incorporation or use, which consent shall be in the sole discretion of the Client and subject to the terms and conditions as agreed to by the Client as set out in the Statement of Work or Change Order.

19.2 Subcontractors

If any applicable Intellectual Property Rights are owned by a Subcontractor or are licensed to the Subcontractor by a related person, the Vendor shall either obtain a licence from that Subcontractor that permits compliance with Sections 19.4, 20.1 and 20.2 or arrange for the Subcontractor to convey directly to the Client the same rights by execution of the form provided for that purpose by the Client, in which case the Vendor shall deliver that form to the Client, duly completed and executed by the Subcontractor, no later than the time of disclosure to the Client of those Vendor Materials.

19.3 Ownership of Vendor Materials

As between the Client and the Vendor, the Vendor shall have and continue to retain all right, title and interest, including all Intellectual Property Rights, in and to all Vendor Materials, except as otherwise set out in this Master Agreement or the Statement of Work. The Client shall not acquire by virtue of this Master Agreement or the Statement of Work any right, title or interest, including any Intellectual Property Rights, in or to any Vendor Materials, except as otherwise set out in the Statement of Work or this Master Agreement.

19.4 Licence to Vendor Materials Incorporated into Deliverables

It is a provision of each Statement of Work that the Vendor hereby grants to the Client a non-exclusive, perpetual, irrevocable, world-wide, fully paid-up, royalty-free licence to exercise all Intellectual Property Rights in the Vendor Materials that are incorporated into any Deliverables, in any way and for any purpose whatsoever except Restricted Commercialization, and to have or permit others to do so. Solely by way of example, the licence granted to the Client above includes the right to use, reproduce, produce any translation, improve, and disclose, and includes the right to sublicense Ontario, OPS Entities, any office of an officer of the Legislative

Assembly or of the Ontario Legislature, Provincially Funded Organizations, other governments and their agencies and other public bodies.

The licence set out in this Section is non-transferable by the Client except that: (1) if the Client is Ontario, the Client may transfer the licence to a Permitted OPS Assignee; and (2) if the Client is an OPS Entity, the Client may transfer the licence to Ontario or where such transfer is necessitated by outsourcing, privatizing, partnering or similar activity, to a non-governmental entity.

19.5 Vendor Materials and Third-Party Contractors

The Vendor acknowledges that the Client may wish to enter into contracts with one or more third parties in respect of the licence rights set out in Section 19.4, whether by a competitive process or not. Without restricting the generality of Section 19.4, the Vendor agrees that the licence granted in relation to the Intellectual Property Rights in the Vendor Materials includes the right to disclose the Vendor Materials to such third parties and to any actual and potential proponents for such contracts, and to sublicense or otherwise authorize any such third parties engaged to do anything solely on behalf of the Client that the Client may do with the Vendor Materials and the Intellectual Property Rights in the Vendor Materials. The Client shall require actual and potential proponents and such third parties not to use or disclose any confidential Vendor Materials incorporated into the Deliverables except as may be necessary to bid for or to carry out any such contracts or except if required by order of a court or tribunal.

19.6 Title to Improvements and Modifications to Vendor Materials

All Intellectual Property Rights arising from any further development or modification of the Vendor Materials that is conceived, developed, effected or first reduced to practice by or for the Client in the exercise of any licence set out in Section 19.4 shall vest in the Client, or as the Client directs, and shall not vest in the Vendor, its Personnel or Subcontractors except pursuant to a subsequent written contract executed by the Client and the Vendor, its Personnel or Subcontractors, as the case may be.

19.7 Vendor Material IP Notice

The Client shall not, without the prior written consent of the Vendor which shall not be unreasonably withheld, remove any intellectual property notices of the Vendor or of the Vendor's Subcontractors on any Vendor Materials.

19.8 Third-Party Vendor Materials Incorporated into the Deliverables

In the case of any Third-Party Vendor Materials that are incorporated into the Deliverables, the Client shall be entitled, at its option, to assume from the Vendor all of its rights to such Third-Party Vendor Materials under any licence and other agreements, and the Vendor shall ensure that any such agreements permitting their assignment and transfer to the Client or as the Client directs, and that such assignment and transfer shall be at no charge to the Client but the Client shall be responsible for any ongoing licence or other payments required to be made to any third parties under any such agreements. If such agreement is not acceptable to the Client, the Vendor will use commercially reasonable efforts to facilitate the Client's pursuit of an acceptable agreement with the relevant third party.

19.9 Third-Party Vendor Materials Used Non-Exclusively

In the case of any Third-Party Vendor Materials that are used in connection with the Services performed for the Client but are also used by the Vendor in connection with services provided by it to others or for the internal purposes of the Vendor not connected with this Master Agreement, upon request by the Client, the Vendor shall assist the Client to acquire a licence to such materials or to acquire from some other person a licence to materials that are functionally/substantively equivalent to such materials. Such licence shall contain terms and conditions as are reasonably acceptable to the Client to enable the Client to obtain or to use the Third-Party Vendor Materials or replacements therefor. The Client shall be responsible for any fees payable to the third-party licensor after such acquisition.

19.10 General

Without limiting any of Sections 19.4 or 19.5, Ontario's rights under this Article:

(a) apply despite any terms to the contrary in any click-wrap licence, documentation (including technical manuals or technical specifications), invoice, shrink-wrap licence, Technical Information, web site, or in any other terms or licence attached to or delivered by the Vendor with any Deliverables, except to the extent that the Client has agreed in writing pursuant to subsection (b) of Section 19.1;

(b) include the right to reproduce and use Vendor Materials incorporated into any Deliverables, and any developed or modified form of them, on any and all computer systems owned, leased or operated by Ontario or the OPS (including OPS Entities) anywhere in the world at any time; and

(c) are in addition to and not in lieu of its rights under any other provisions of this Master Agreement or the Statement of Work.

19.11 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 20. SPECIFIC THIRD-PARTY SUBLICENSEES

20.1 Provincially Funded Organizations

Without restricting Section 19.4, the Vendor agrees that the Client's licence rights under a Statement of Work in relation to the Intellectual Property Rights in the Vendor Materials incorporated into any Deliverables include the right to disclose such Vendor Materials to any Provincially Funded Organizations, and to sublicense or otherwise authorize the Provincially Funded Organization to exercise the licence rights granted under the Statement of Work. Such disclosure of Vendor Materials incorporated into any Deliverables shall be limited and subject to obligations of confidentiality.

20.2 Third-Party Non-Governmental Entities

Without restricting Sections 19.4 and 19.5, the Vendor agrees that the Client's licence rights under a Statement of Work in relation to the Intellectual Property Rights in the Vendor Materials incorporated into any Deliverables include the right to disclose such Vendor Materials to any third-party non-governmental entities that provide services to or on behalf of the Client as a result of alternative service delivery, backward or forward integration, outsourcing, privatization, partnering, procurement endeavours or similar activity, and to sublicense or otherwise authorize such third-party non-governmental entities to exercise the licence rights granted to the Client under the Statement of Work to the extent that they are exercised for or on behalf of the Client. The Client shall require such third-party non-governmental entities not to use or disclose any confidential Vendor Materials incorporated into the Deliverables except as may be necessary to provide services to or on behalf of the Client as contemplated in this Section.

20.3 Patent Licences

To the extent necessary for the Client to exercise any licence granted under a Statement of Work, it is a provision of each Statement of Work that the Vendor hereby grants to the Client a licence under any patent now held or later obtained by the Vendor (or a sub-licence under any patent now held or later obtained by its Subcontractors). Such patent licence shall be co-extensive and co-terminus with such licence. Nothing contained in this Article or in Article 16 shall be deemed to grant to the Vendor any rights with respect to any Inventions, including any Vendor Work Inventions, Joint Work Inventions, and Client Work Inventions.

20.4 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 21. PERSONAL KNOWLEDGE, SKILL AND EXPERTISE, AND GENERIC CONCEPTS, IDEAS AND KNOW-HOW

21.1 Personal Knowledge, Skill and Expertise

Each Party understands and agrees that each of the Personnel of the other Party, in connection with the performance of this Master Agreement or a Statement of Work, may acquire Personal Knowledge. Subject to Article 26, Article 28, the Privacy Provisions and any other statute under which Ontario or the OPS Entity has the discretion or obligation not to disclose any records or other information, the use by such Personnel of the other Party of such Personal Knowledge in the ordinary course of their employment with the other Party (including its subsidiaries, its parent, or other subsidiaries of its parent, in the case of the Vendor; and including Ontario, OPS Entities, offices of an officer of the Legislative Assembly or of the Ontario Legislature, or Provincially Funded Organizations, in the case of Ontario or the OPS Entity; and its Subcontractors) does not breach the Statement of Work provided, however, that nothing in this Section grants to any Personnel the right to obtain a patent in respect of any such Personal Knowledge.

21.2 Employee Mobility

Each Party agrees that the other Party's receipt of confidential information as contemplated by a Statement of Work will not create any obligation in any way limiting or restricting the transfer of Personnel within the other Party's organization.

21.3 Indemnity

Despite the limitations of liability set out in Article 33 (Limitation of Liability), the Vendor shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with the use by the Vendor's Personnel of any Personal Knowledge referred to in Section 21.1 (Personal Knowledge, Skill and Expertise) or any concepts, ideas or know-how referred to in Section 21.4 (Use of Generic Concepts, Ideas, or Know-How by Vendor).

21.4 Use of Generic Concepts, Ideas, or Know-How by Vendor

Subject to Article 26 and the Privacy Provisions and any other statute under which Ontario or the OPS Entity has the discretion or obligation not to disclose any records or other information, Ontario and the OPS Entity each acknowledges that the Vendor shall be entitled on a non-exclusive, non-transferable, perpetual, world-wide, irrevocable, fully-paid up, royalty-free basis to use in its business, and for purposes of developing and incorporating into other works and licensing such works to others, any concepts, ideas or know-how, whether patented (or patentable) or not, that are developed or created by the Vendor in the course of providing the Services, and that are not retained by the Vendor in any electronic, optical, printed, written or other recorded form, but only to the extent they are of a generic technical nature and are not specific to the operation and activities of Ontario or the OPS Entity, and only to the extent that they are not protected by the Intellectual Property Rights of any third party, and provided, however, that the rights of the Vendor under this Section do not include the right to obtain a patent in respect of any such concepts, ideas or know-how. The rights of the Vendor under this Section do not include the right to disclose personnel information, financial information, statistical information, business plans or processes, pre-existing code, documentation or any other such information or intellectual property of the OPS.

21.5 Scope

Nothing in this Article grants or waives any Intellectual Property Rights of either Party or any other person.

21.6 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 22. PROPERTY OF ONTARIO AND THE OPS ENTITIES

22.1 Ownership of Ontario Materials and Ontario Data

The Vendor acknowledges that Ontario, the OPS Entity and their respective Subcontractors and third-party licensors shall have and continue to retain all right, title and interest, including all Intellectual Property Rights, in and to all Ontario Materials and Ontario Data, all assets acquired or held by Ontario or the OPS Entity prior to the Project Start Date or during the Project Term of each Statement of Work, and all assets provided by Ontario or the OPS Entity to the Vendor in connection with each Statement of Work. The Vendor shall not acquire by virtue of this Master Agreement, or any Statement of Work, any right, title or interest, including any Intellectual Property Rights, in or to any Ontario Materials and Ontario Data.

22.2 Ownership of Third-Party Ontario Materials

Nothing in this Master Agreement or any Statement of Work or the performance of any Statement of Work shall grant to the Vendor any right, title or interest in or to any Third-Party Ontario Materials. To the extent any right, title or interest in or to any Third-Party Ontario Materials vests, by operation of law or otherwise, in the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law), the Vendor shall, and hereby does, irrevocably assign and transfer to the Client at no cost all of its right, title and interest in and to all such Third-Party Ontario Materials, and the same shall be deemed to form part of the Ontario Materials.

22.3 Works of Joint Authorship

Subject to Section 16.2 and Section 19.3, if any Newly-Created Materials or any portion thereof (such as the Joint Work Material) is a work of joint authorship, the copyright in the work of joint authorship shall immediately, as soon as it comes into existence, vest in the Client, and the Vendor and its Subcontractors shall have no right, title or interest in or to it.

22.4 Proscribed Intellectual Property Rights Registrations

The Vendor shall not file any application, and shall not contest any application filed by Ontario or any OPS Entity, in any jurisdiction for the registration of any Intellectual Property Rights arising out of any Newly-Created Materials (including any Client Work Information, Vendor Work Information and Joint Work Materials), Ontario Materials, Client Work Inventions, Vendor Work Inventions or Joint Work Inventions, whether or not such Intellectual Property Rights depend or would depend upon any pre-existing Intellectual Property Rights.

22.5 Collective Works and Compilations

Despite any other provision in this Master Agreement or the Statement of Work, if any Newly-Created Materials or any portion thereof is a collective work or a compilation:

(a) the Client shall retain its right, title and interest in and to its contribution to such collective work or compilation;

(b) ownership of all right, title and interest in and to the Vendor's and its Subcontractors' contributions to such collective work or compilation shall be governed by Section 16.1; and

(c) the copyright in such collective work or compilation shall immediately, as soon as it comes into existence, vest in the Client, and the Vendor and its Subcontractors shall have no right, title or interest in or to it.

22.6 Client Work Inventions and Client Work Information

The Client retains all of its Intellectual Property Rights and all of its right, title, and interest throughout the world to each Client Work Invention and to all Client Work Information.

22.7 Intellectual Property Rights to Ontario Materials

To the extent any Intellectual Property Rights or any other right, title or interest in or to any Ontario Materials vests, by operation of law or otherwise, in the Vendor (or its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors or others for whom it is responsible at law), the Vendor shall, and hereby does, irrevocably assign, sell and transfer to the Client at no cost all of its Intellectual Property Rights and other right, title and interest in or to all such Ontario Materials.

22.8 Ontario Government Insignia

Nothing in this Master Agreement or any Statement of Work or the performance of any Statement of Work shall grant to the Vendor any right, title or interest in or to any Ontario Government Insignia. The Vendor shall not use any Ontario Government Insignia except where required to perform the Services, and only if it has received the express prior written authority of Ontario to do so.

22.9 Survival

The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Statement of Work.

ARTICLE 23. [INTENTIONALLY LEFT BLANK]

ARTICLE 24. [INTENTIONALLY LEFT BLANK]

ARTICLE 25. [INTENTIONALLY LEFT BLANK]

ATTACHMENT F TO MASTER AGREEMENT - ASSIGNMENT OF COPYRIGHT

NOTE: THIS NOTE AND ALL INSTRUCTIONS CONTAINED IN THIS DOCUMENT ARE INTENDED ONLY AS GUIDES AND SHOULD BE DELETED.

A. Form of Assignment of Copyright – Ministries and Certain OPS Entities

[Instructions: The template below is to be used by: (1) a ministry; or (2) any OPS Entity to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies. At least one fully completed and signed assignment of copyright under each Statement of Work must be signed by the Vendor upon the completion of the performance of all Services and delivery of all Deliverables under the Statement of Work. The Vendor must submit it promptly to the Client Representative.]

ASSIGNMENT OF COPYRIGHT

THIS ASSIGNMENT is made in duplicate as of **[Instructions: insert date]**.

Ontario and **[Instructions: Insert legal name of the Vendor]** (the "Vendor") entered into a Master Agreement for Management Consulting Services, dated **[Insert Date]**, reference number OSS-0042661 (the "Master Agreement"), pursuant to a Request for Proposals for Management Consulting Services issued by the Minister of Government Services. All terms with initial capital letters used in this Assignment of Copyright without definition shall have the meaning ascribed to them in the Master Agreement.

In consideration of **[Instructions: If a ministry entered into the Statement of Work on behalf of Ontario, insert "Her Majesty the Queen in right of Ontario as represented by", and identify the minister that signed the Statement of Work on behalf of Ontario; insert "the Minister of" and name the applicable ministry, and in the case of the Ministry of the Attorney General, insert "the Attorney General". If an OPS Entity to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies entered into the Statement of Work, set out the appropriate name of the OPS Entity here.]** entering, pursuant to the Master Agreement, into an agreement with the undersigned, entitled **[Instructions: insert title of the Statement of Work],** dated **[Instructions: insert date],** 20**[Instructions: complete year]**, reference number **[Instructions: insert reference number]** (the "Statement of Work"), the undersigned agreed to assign and now does assign and transfer unto the Queen's Printer for Ontario: (a) each and every copyright and interest in copyright in Canada and throughout the known universe in and to: (i) if Attachment D (Vendor/Client Ownership Provisions) applies to the Statement of Work, Confidential Work Information, Joint Work Materials, Joint Work Inventions, Non-Technical Work and Other Work Inventions and, where the Statement of Work is terminated in accordance with Section 18.1 (Assignment on Default), Vendor Work Inventions and Vendor Work Information; or (ii) if Attachment E (Client Ownership Provisions) applies to the Statement of Work, Newly Created Materials, Joint Work Inventions and Vendor Work Inventions; and (b) all of the Vendor's right, title and interest in and to each copyright referred to in: (i) if Attachment D applies to the Statement of Work, Section 24.3 (Works of Joint Authorship) and subsection 24.5(c) (Collective Works and Compilations) of the Master Agreement; or (ii) if Attachment E (Client Ownership) applies to the Statement of Work, Section 22.3 (Works of Joint Authorship) and subsection 22.5(c) (Collective Works and Compilations) of the Master Agreement.

Without limiting the generality of the foregoing and for certainty, the foregoing and the documents that record the Inventions, include, but are not limited to: **[Instructions: Identify each applicable component of the Deliverable listed in above (a) or (b) above based on whether Attachment D or Attachment E applies and document that records the applicable Joint Work Inventions, Other Work Inventions and Vendor Work Inventions.]**

IN WITNESS WHEREOF the undersigned has executed this Assignment.

[Instructions: Insert legal name of the Vendor]

Per:

Signature: _____

Name: _____

Title: _____

I have authority to bind the Vendor.

B. Form of Assignment of Copyright – OPS Entities (other than OPS Entities to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies)

[Instructions: The template below is to be used by an OPS Entity (other than OPS Entities to which Section 25.1 of Attachment D or Section 17.1 of Attachment E applies). At least one fully completed and signed assignment of copyright under each Statement of Work must be signed by the Vendor upon the completion of the performance of all Services and delivery of all Deliverables under the Statement of Work. The Vendor must submit it promptly to the Client Representative.]

ASSIGNMENT OF COPYRIGHT

THIS ASSIGNMENT is made in duplicate as of **[Instructions: insert date]**.

Ontario and **[Instructions: Insert legal name of the Vendor]** (the "Vendor") entered into a Master Agreement for Management Consulting Services, dated **[Insert Date]**, reference number OSS-00426611 (the "Master Agreement"), pursuant to a Request for Proposals for Management Consulting Services issued by the Minister of Government Services. All terms with initial capital letters used in this Assignment of Copyright without definition shall have the meaning ascribed to them in the Master Agreement.

In consideration of **[Instructions: Set out the appropriate name of the OPS Entity here.]** entering, pursuant to the Master Agreement, into an agreement with the undersigned, entitled **[Instructions: insert title of the Statement of Work]**, dated **[Instructions: insert date]**, 20**[Instructions: complete year]**, reference number [Instructions: insert reference number] (the "Statement of Work"), the undersigned agreed to assign and now does assign and transfer unto the **[Instructions: Set out the appropriate name of the OPS Entity here.]**: (a) each and every copyright and interest in copyright in Canada and throughout the known universe in and to: (i) if Attachment D (Vendor/Client Ownership Provisions) applies to the Statement of Work, Confidential Work Information, Joint Work Materials, Joint Work Inventions, Non-Technical Work and Other Work Inventions, and, where the Statement of Work is terminated in accordance with Section 18.1 (Assignment on Default), Vendor Work Inventions and Vendor Work Information; or (ii) if Attachment E (Client Ownership Provisions) applies to the Statement of Work, Newly Created Materials, Joint Work Inventions and Vendor Work Inventions; and (b) all of the Vendor's right, title and interest in and to each copyright referred to in: (i) if Attachment D applies to the Statement of Work, Section 24.3 (Works of Joint Authorship) and subsection 24.5(c) (Collective Works and Compilations) of the Master Agreement; or (ii) if Attachment E (Client Ownership) applies to the Statement of Work, Section 22.3 (Works of Joint Authorship) and subsection 22.5(c) (Collective Works and Compilations) of the Master Agreement.

Without limiting the generality of the foregoing and for certainty, the foregoing and the documents that record the Inventions, include, but are not limited to: **[Instructions: Identify each applicable component of the Deliverable listed in above (a) or (b) above based on whether Attachment D or Attachment E applies and document that records the applicable Joint Work Inventions, Other Work Inventions and Vendor Work Inventions.]**

IN WITNESS WHEREOF the undersigned has executed this Assignment.

[Instructions: Insert legal name of the Vendor]

Per:

Signature: _____

Name: _____

Title: _____

I have authority to bind the Vendor.

ATTACHMENT G TO MASTER AGREEMENT – WAIVER OF MORAL RIGHTS

NOTE: THIS NOTE AND ALL INSTRUCTIONS CONTAINED IN THIS DOCUMENT ARE INTENDED ONLY AS GUIDES AND SHOULD BE DELETED.

WAIVER OF MORAL RIGHTS

THIS WAIVER OF MORAL RIGHTS is made in duplicate.

Her Majesty the Queen in right of Ontario as represented by the Minister of Government Services and **[Instructions: Insert legal name of the Vendor.]** (the "Vendor") entered into a Master Agreement for Management Consulting Services, dated **[insert date]**, reference number OSS-00426611 (the "Master Agreement").

Pursuant to the Master Agreement, **[Instructions: If a ministry entered into the Statement of Work on behalf of Ontario, insert "Her Majesty the Queen in right of Ontario as represented by", and identify the minister that signed the Statement of Work on behalf of Ontario; insert "the Minister of" and name the applicable ministry, and in the case of the Ministry of the Attorney General, insert "the Attorney General". If an OPS Entity entered into the Statement of Work, set out the appropriate name of the OPS Entity here.]** (the "Client") and the Vendor entered into a statement of work dated **[Instructions: insert date]**, reference number **[Instructions: insert reference number]** (the "Statement of Work").

The Vendor agreed to cause each and every individual who is assigned by the Vendor to perform services for the Client, pursuant to the Statement of Work, to execute this Waiver of Moral Rights.

I, **[Instructions: insert the full legal name of the individual.]**, an author of any or all of the Deliverables, as this term is defined in the Master Agreement, hereby expressly, irrevocably and without restriction, waive all my Moral Rights with respect to all Deliverables in favour of Her Majesty the Queen in right of Ontario and all of its ministries and other administrative units over which ministers of Ontario preside, including without limitation Ontario and Ontario's agencies, boards, commissions, and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature, the OPS Entities, and all sublicensees and assignees, and all persons authorized at any time to use the Deliverables.

In this Waiver of Moral Rights, "Moral Rights" has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42, as amended or replaced from time to time, and includes comparable rights in applicable jurisdictions, and includes without limitation the right of attribution of authorship, the right to restrain any distortion, mutilation or other modification of any work and the right to prohibit any use of any work in association with a product, service, cause or institution that may be prejudicial to my honour or reputation.

IN WITNESS WHEREOF I have executed this Waiver of Moral Rights.

[INSTRUCTIONS: INSERT THE FULL LEGAL NAME OF THE INDIVIDUAL.]

Signature: _____

Date: _____

Address: _____

_____

ATTACHMENT H TO MASTER AGREEMENT - CONFIDENTIALITY AGREEMENT

NOTE: THIS NOTE AND ALL INSTRUCTIONS CONTAINED IN THIS DOCUMENT ARE INTENDED ONLY AS GUIDES AND SHOULD BE DELETED.

Confidentiality Agreement

During and following the term of the Master Agreement for Management Consulting Services effective **[insert effective date]** between **[Instructions: insert name of Vendor.]** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the Minister of Government Services, (the "Master Agreement") and during and following the term of each Statement of Work entered into by the Vendor and **[Instructions: If a ministry entered into the Statement of Work on behalf of Ontario, insert "Her Majesty the Queen in right of Ontario as represented by", and identify the minister that signed the Statement of Work on behalf of Ontario; insert "the Minister of" and name the applicable ministry, and in the case of the Ministry of the Attorney General, insert "the Attorney General". If an OPS Entity entered into the Statement of Work, set out the appropriate name of the OPS Entity here.]** (the "Client") pursuant to the Master Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and OPS Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the Freedom of Information and Protection of Privacy Act ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain measures to ensure the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain the most appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

The undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Name: _____ Signature: _____
Date: _____

Witness: _____ Signature: _____
Date: _____

ATTACHMENT I TO MASTER AGREEMENT - INVENTION DISCLOSURE FORM

INVENTION DISCLOSURE FORM

Confidential - This form contains scientific, technical and commercial information and trade secrets that are provided in confidence to Her Majesty the Queen in right of Ontario or the OPS Entity.

Statement by the Vendor			
Name of Vendor	**Business Mailing Address**	**Business Telephone Number**	
Identify the applicable contract/statement of work with Ontario or OPS Entity under which the invention was conceived, developed or first reduced to practice			
Title of Contract/Statement of Work	**Ministry signing on behalf of Ontario; or OPS Entity**	**Date of Contract/Statement of Work**	
Is the invention or any part of it being further developed under the contract/statement of work? **Yes** q **No** q		**Will the invention or any part of it be further developed under the contract/statement of work?** **Yes** q **No** q	
If the answer to either of the questions above is "Yes", and the development is being made or will be made by a subcontractor, complete the following.			
Name of Subcontractor No. 1	**Business Mailing Address**	**Business Telephone Number**	**Contact Name**
Name of Subcontractor No. 2	**Business Mailing Address**	**Business Telephone Number**	**Contact Name**
Name of Subcontractor No. 3	**Business Mailing Address**	**Business Telephone Number**	**Contact Name**
Signature of the Vendor			
Signature:		**Date:**	
Name:	**Title:**	**Place:**	

Statement from Inventors			
Title of Invention			
Number of Inventors			
Instructions: Use additional Invention Disclosure Forms if there are more than three inventors			
Name of Inventor No. 1	**Residence Address**	**Residence Telephone Number**	**Citizenship**
Name of Employer When Invention Made	**Business Mailing Address**	**Business Telephone Number**	
Name of Supervisor When Invention Made	**Title of Inventor When Invention Made**	**Nature of Inventor's Work When Invention Made**	
Name of Key Ministry/ OPS Entity Contact	**Telephone Number of Key Ministry /OPS Entity Contact**		
Name of Inventor No. 2	**Residence Address**	**Residence Telephone Number**	**Citizenship**
Name of Employer When Invention Made	**Business Mailing Address**	**Business Telephone Number**	
Name of Supervisor When Invention Made	**Title of Inventor When Invention Made**	**Nature of Inventor's Work When Invention Made**	
Name of Key Ministry/ OPS Entity Contact	**Telephone Number of Key Ministry/ OPS Entity Contact**		
Name of Inventor No. 3	**Residence Address**	**Residence Telephone Number**	**Citizenship**
Name of Employer When Invention Made	**Business Mailing Address**	**Business Telephone Number**	
Name of Supervisor When Invention Made	**Title of Inventor When Invention Made**	**Nature of Inventor's Work When Invention Made**	
Name of Key Ministry/ OPS Entity Contact	**Telephone Number of Key Ministry/ OPS Entity Contact**		

Description of the Invention
Instructions: Avoid jargon. Attach additional pages as appendices as necessary, including drawings, sequences of steps in a process, references to published literature or known patents relating to the problem or the invention, additional information, etc.
Provide a clear and concise summary of the invention, and indicate the technical field to which it pertains
What is the problem that the invention deals with?
What is the concept for solving the problem through the invention?
What are the principal uses of the invention?
Which concepts or ideas are thought to be new, useful and unobvious?
Which concepts or ideas are thought to be an improvement on prior art?
Which concepts or ideas are thought to be capable of commercial exploitation now or in the future?
What are potential commercial applications of the invention?

History of Invention		
A. Events other than disclosures	**Date**	**Names and Addresses of People Having First-Hand Knowledge, and Places Where Events Occurred**
Conception of invention		
First written description		
First test of invention		
B. Disclosures	**Date**	**Names, Places, Form (written / oral) and Exact Information Disclosed (or "None")**
Disclosure in any publication		
Disclosure at any conference		
Disclosure at any presentation or demonstration		
Other disclosure		
Planned disclosures to non-government personnel		
Have the inventors assigned the invention?	**If "yes", name of assignee**	**If "yes", address of assignee**
Are any inventors obligated to assign, license or convey the invention to any other entity?	**If "yes", name of other entity**	**If "yes", address of other entity**

Signatures of Inventors	
Inventor No. 1:	**Date:**
	Place:
Inventor No. 2:	**Date:**
	Place:
Inventor No. 3:	**Date:**
	Place:

ATTACHMENT J TO MASTER AGREEMENT-PROVINCIALLY FUNDED ORGANIZATION NOTICE

[INSTRUCTION TO VENDOR: PRIOR TO responding to requests from a Provincially Funded Organization, forward a copy of this document to the Provincially Funded Organization. Aside from inserting the information in the applicable fields below, this Provincially Funded Organization Notice may not be amended.]

BACKGROUND INFORMATION:

o Ontario has established various vendor of record arrangements (each a "**VOR Arrangement**") for selected qualified vendors (each a "**Vendor**") to supply certain products or services, or both, (the **"Deliverable"**) to Ontario.

o Vendors under most VOR Arrangements are required, subject to the terms of their agreement with Ontario under the applicable VOR Arrangement (each an "**Ontario Agreement**"), to consider requests from you (if you are a "Provincially Funded Organization", as defined in the applicable Ontario Agreement) to make Deliverables available to you for purchase.

o In order for a Vendor to consider requests from you, the Vendor must first provide you with this Provincially Funded Organization Notice ("**Notice**").

o If you continue with your request after being provided with this Notice, you will be deemed to have acknowledged and agreed to the terms set out in this Notice.

TERMS

1. Your Status in Relation to Ontario Agreements. You are not a party to any Ontario Agreement and you cannot acquire any Deliverables as a "Client" under any Ontario Agreement. If you wish to acquire products and services from a Vendor, you must enter into a separate agreement with the Vendor ("**Provincially Funded Organization Agreement**").

2. Provincially Funded Organization Agreement. Although Ontario is providing you with access to Vendors listed on VOR Arrangements, you remain solely responsible for negotiating the terms and conditions of your Provincially Funded Organization Agreement with each Vendor, including the responsibility for ensuring that each of your Provincially Funded Organization Agreements contains business, legal or other terms and conditions as may be necessary or desirable for you.

3. Procurement Processes. You are solely responsible for ensuring that the selection of any Vendor and the procurements made under any of your Provincially Funded Organization Agreements comply with any and all procurement rules, regulations, obligations and processes to which you are subject. Any differences between the terms and conditions of an Ontario Agreement and the terms and conditions of your Provincially Funded Organization Agreement may affect whether the selection of the Vendor and the procurements made under your Provincially Funded Organization Agreement meet the procurement rules, regulations, obligations or processes to which you are subject.

4. Ontario Not Liable for Your Relationship with Vendors.

   - Ontario does not endorse, recommend or approve the suitability of: (i) any Vendor as a supplier to you; (ii) the procurement process used to establish any VOR Arrangement as meeting the procurement rules, regulations, obligations and processes to which you are subject; (iii) the ordering process established for any VOR Arrangement as meeting the procurement rules, regulations, obligations and processes to which you are subject; and (iv) the terms and conditions of any Ontario Agreement as a basis for, in whole or in part, any Provincially Funded Organization Agreement or any other resulting or related relationships or agreements between you and any Vendor. You are solely responsible for conducting your own independent assessment (including obtaining your own professional advice (which may include legal and business advice) as may be necessary and appropriate in your specific circumstances) to determine the suitability of the above.

Please note that legal and other professional advice provided to Ontario with respect to the establishment of its VOR Arrangements and its Ontario Agreements was solely for the benefit of Ontario to take into account Ontario's specific legal and other concerns, and may not be applicable to or appropriate for, and may not address any of your concerns or the concerns of any other third party. Legal counsel for Ontario recommends that you obtain independent legal representation and receive independent legal advice, as well as other required independent professional advice, prior to executing any document or entering into any contract or agreement with, or acquiring any products or services from, a Vendor.

- Ontario makes no representation, assurance, warranty, or guarantee: (i) that a Vendor will enter into a Provincially Funded Organization Agreement with you; or (ii) of the quality, value or volume of products or services that may or will be sold, if any, to you.

- Ontario will not: (i) be or be deemed to be a party to, or a guarantor of any obligations or liability of any party under, any Provincially Funded Organization Agreement or any resulting or related relationship or agreement between you and any Vendor; or (ii) be responsible or liable to you for, and nothing in any agreement between you and any Vendor will have the effect of imposing or resulting in the imposition of, any costs, obligation, liability or covenant on Ontario for any matter arising under or in connection with: the VOR Arrangement; any Deliverable; the Ontario Agreement or any related documentation; any access to the VOR Arrangement or the Ontario Agreement or related documentation; any Provincially Funded Organization Agreement; any act, error or omission of the Vendor (including the provision or non-provision of any Deliverables or other products or services by the Vendor); or this Notice.

- You will not, in relation to or under any Provincially Funded Organization Agreement or under any resulting or related relationship or agreement between you and any Vendor, bring any cause of action, action, claim, demand or lawsuit against Ontario or any of its personnel as a result of: (i) any act, error or omission of the parties to any Provincially Funded Organization Agreement; or (ii) any act, error or omission of Ontario or any of its personnel.

- Any obligations, costs or liability arising under or in connection with any Provincially Funded Organization Agreement or any resulting or related relationships or agreements between you and the Vendor will remain with you and the Vendor.

- You are solely responsible for your own contract administration with the Vendor and will not direct any issues that may arise with the Vendor to Ontario.

- For the purposes of any Provincially Funded Organization Agreement, you have no power or authority to bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario.

5. Data and Documentation. You will provide to Ontario, at Ontario's request, any data and documentation about your acquisition of products and services from the Vendor.

6. Access to VOR Arrangements, Vendor/Ontario Agreements and Deliverables. It is Ontario's intention that, if you choose to access any VOR Arrangement, you will do so only to acquire products or services for your operational needs. Ontario, in its sole discretion, may delay, restrict or choose to not renew access by you to information regarding any VOR Arrangement, any Ontario Agreement and any products and services provided by the suppliers to Ontario on any VOR Arrangement.

7. Restrictions to Becoming a Supplier to Ontario. If you choose to access the Ministry of Government Services' enterprise-wide VOR Arrangements, you are advised that, in some circumstances, you may be restricted or ineligible to submit a bid to become a supplier to Ontario under future procurement opportunities.

8. Confidentiality. You acknowledge that information of a confidential nature to Ontario or the Vendor, regardless of whether it is identified as confidential or not ("**Confidential Information**") may come into your

knowledge, possession or control. You will: (a) keep all Confidential Information confidential and secure; (b) limit the disclosure of Confidential Information to only those of your directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of acquiring or considering the acquisition of products and services from a Vendor (the "**Purpose**") and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential Information (except for the Purpose, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Ministry of Government Services ("**MGS**"); and (ii) in respect of any Confidential Information about the Vendor or any other third-party, the written consent of the Vendor and any such other third-party; and (d) return all Confidential Information to MGS on demand, with no copy or portion kept by you. You will not copy any Confidential Information, in whole or in part, unless copying is essential for the Purpose. On each copy made by you, you will reproduce all notices which appear on the original.

RE_ Suggestions for edits (NPP) .rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
CC: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: RE: Suggestions for edits (NPP)
Date: Wednesday, March 22, 2017 08:01:51

---

ok

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, March 21, 2017 10:24 PM
To: Picard, Michel <mpicard@kpmg.ca>; samir chhelavda (Samir.Chhelavda@HydroOne.com) <Samir.Chhelavda@HydroOne.com>
Cc: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Subject: FW: Suggestions for edits (NPP)

Michel/Samir,

I understand that there will likely be a call at 9 am to discuss possible edits to the docs (see below). It would be good if you were available to participate. Will forward details when they become available.

Thanks.

Nadine

From: Petsche, Nadine (TBS)
Sent: March-21-17 10:02 PM
To: stephen.ashbourne@blakes.com; Schwab-Pflug, Emma (ENERGY)
Subject: Suggestions for edits (NPP)

Thanks Stephen.

For Emma's (MOE's) purpose, the PSAS reference I quoted earlier as quite relevant to addressing the remaining terminology is:

0.14 There are a variety of ways to govern the financial and operating policies of an

organization. For example:

(a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;

(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or

(c) a government may veto, overrule or modify the financial and operating policies established by an organization.

With the above guidance in mind, to further mitigate the accounting risk, I would further suggest edits as noted below. I will review additional feedback from H1 and provide additional comments, if in any, shortly (I hope).

Nadine

****

"Any Trustee initiated changes to the Trust Declaration ARE EXPECTED TO BE consistent (vs. can't conflict with) with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably MODIFY (vs. clarify) the principles set forth in the Principles [npp – these changes will ensure consistency with messaging that the principles are non-compulsory and subject to change vs. clarification]

Trust Declaration:

Section 6.1 of the Trust Declaration …subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that ~~no~~ any amendments are expected to be consistent with ~~shall not conflict with~~ the principles set

forth in the Principles Annex and to take into consideration the suggested scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] [npp – see above – consistency in messaging important]

3.2Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. ~~If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, Where the parties agree under 3.2, to an extension of the date, it is expected that so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust~~, If under 3.2, the parties agree that the term of the Agreement may be extended, ~~will~~ it is expected that the Trust will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

Schedule C (last para)

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient is requested to advise the Province through the quarterly report back process on the status of any activities involving the above suggested activities. (insert requirement under report backs) [npp – change recommended to eliminate suggestion that activities as noted are compulsory]

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements.*** As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees ~~shall~~ is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

Other matters:

-

Consider if current description of Board of Trustees would preclude H1 from being a Trustee.

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Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. (Npp- can refer to alignment with principles in province's procurement directive (provided in separate email).

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From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
CC: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: Re: Suggestions for edits (NPP)
Date: Wednesday, March 22, 2017 08:22:09

Michel/Samir,
I understand that the call to review my suggested edits (to address actg risks) will be at another time (this morning). I will let you know when. N
From: Picard, Michel
Sent: Wednesday, March 22, 2017 8:02 AM
To: Petsche, Nadine (TBS); samir chhelavda (Samir.Chhelavda@HydroOne.com)
Cc: Schwab-Pflug, Emma (ENERGY)
Subject: RE: Suggestions for edits (NPP)

ok

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To: Picard, Michel <mpicard@kpmg.ca>; samir chhelavda (Samir.Chhelavda@HydroOne.com) <Samir.Chhelavda@HydroOne.com>
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Schedule C (last para)

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- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

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Re_ Tomorrow’s meeting.rtf

From: Petsche, Nadine (TBS) []
To: Lee Anne Probert [leeanne.probert@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Re: Tomorrow's meeting
Date: Friday, July 14, 2017 08:17:22

Hi Lee Anne.
As of now, 9:30 should work. N

From: Lee Anne Probert
Sent: Friday, July 14, 2017 8:13 AM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Jack, Shannon (TBS); Virani, Shyrose (TBS); Suzie Gignac
Subject: Re: Tomorrow's meeting

Thanks. Between 10:00 and 2:15 on Monday works best for me.

Nadine, I would still like to chat with you today if that's possible. I'm working on your comments and there's a few I would like to clarify. Is there a time between 9:30 and 3:00 that you're available?

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: July 14, 2017 at 8:03:10 AM EDT
To: Lee Anne Probert <leeanne.probert@ca.ey.com>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Jack, Shannon (TBS) <Shannon.Jack@ontario.ca>, Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>, Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: Re: Tomorrow's meeting

Let's reschedule for Monday. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Petsche, Nadine (TBS)
Sent: Thursday, July 13, 2017 10:51 PM
To: Lee Anne Probert; Veinot, Cindy (TBS)
Cc: Suzie Gignac; Jack, Shannon (TBS); Virani, Shyrose (TBS)
Subject: Re: Tomorrow's meeting

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Regards,
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[cid:image001.gif@01D2FC21.354ACAA0]

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
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Office: 416 943 3554 | Cell: 416 888 6997 |
leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
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Re_ Tomorrow’s meeting.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Re: Tomorrow's meeting
Date: Friday, July 14, 2017 08:08:57

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Date: July 14, 2017 at 8:03:10 AM EDT
To: Lee Anne Probert <leeanne.probert@ca.ey.com>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Cc: Jack, Shannon (TBS) <Shannon.Jack@ontario.ca>, Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>, Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: Re: Tomorrow's meeting

Let's reschedule for Monday. Thanks

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image001.pdf

RE_ TPA and Declaration of Trust Feedback.rtf

From: Petsche, Nadine (TBS) []
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Sermat-Harding, Kaili (ENERGY) [Kaili.Sermat-Harding@ontario.ca]
Subject: RE: TPA and Declaration of Trust Feedback
Date: Monday, March 20, 2017 14:43:58
Attachment 1: image001.gif
Attachment 2: TOR_2024-#12888010-v10-Transfer_Payment_Agreement_(Affordability_Fund_Trust)np.docx

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My apologies. Forgot the attachment. Comments on Declaration to follow in 5 mins.n

From: Petsche, Nadine (TBS)
Sent: March-20-17 2:04 PM
To: 'ASHBOURNE, STEPHEN'; Schwab-Pflug, Emma (ENERGY)
Cc: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Qureshi, Musab (ENERGY); Syed, Usman (ENERGY); Sermat-Harding, Kaili (ENERGY)
Subject: RE: TPA and Declaration of Trust Feedback

Stephen/Emma,

Please see comments on the revised TPA (looks great). Will provide comments on the Trust Declaration shortly. N

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-20-17 1:02 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Declaration of Trust Feedback

Please see the updated versions of the Documents, attached. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents
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From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that

the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

From: "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
Cc: "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
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Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

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From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image001.pdf

Blakes

TOR_2024-#12888010-v10-Transfer_Payment_Agreement_(Affordability_Fund_Trust)np.pdf

Draft: March 20, 2017

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

Commented [A1]: Yes, helpful per KPMG and OPCD

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] **NTD: Consider if this sort of fail-safe is helpful.**

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension. **[NTD: This is an exception to the rule that the Province will not be able to cause a change in the TPA. It was inserted to reflect the permitted extension of the Program discussed in the accounting context on Saturday. Please advise if not permitted or revise language to address concerns.]**

Commented [A2]: Will consider undertaking

Commented [A3]: Would any other changes still be subject to provincial consent? If yes, should refer to the appropriate clause. Mutual consent is not control, so should be ok. Could also include mirror clause that the Recipient is expected not to unreasonably withhold such consent?

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion as Trustee, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

Commented [A4]: Is expected to?

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it ~~will~~ is expected to do so through a process that promotes the best value for money and ~~will~~ to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that ~~will carry out~~ the Program and use, applicationy and distribution of~~e~~ the Funds without an actual, potential or perceived conflict of interest.

~~6.1~~6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

~~6.2~~6.3 ~~**Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest. [NTD: Consider from accounting perspective]~~

7.0 REPORTING, ACCOUNTING AND REVIEW

[2] **NTD: Consider in relation to promotional objectives and in the context of any License Agreement.**
[3] **NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?**

Commented [A5]: Inserted to address concern from provincial perspective. This together with quarterly report backs on COI should allow for some oversight, but not control over COI. If the Province is not controlling the trust, the only way to mitigate would be through audits which could also assess controls in place to mitigate this risk.

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Commented [A6]: With regards to footnotes:
- Consider using 'expected to' language when referencing actions of the LDCs (not in a position to direct anyway)
-With regards to COI – expectation would be that Trust would have a process in place to mitigate and deal with potential COI issues. (MOVED disclosure requirement to Schedule F)

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) [conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents as well as processes and controls in place to ~~nd information to~~ obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.] [NTD: Consider from accounting perspective]

Commented [A7]: Should be ok in accordance with OPCD's TP Guidance documentation

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor*

Commented [A8]: See extracts from the AG Act inserted for reference. AG can audit.

(a) [4] **NTD: Does the AG have any authority in respect of a non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the**

General Act (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

Province's compliance with this statute. References from the AG Act: "grant recipient" means an association, authority, board, commission, corporation, council, foundation, institution, organization or other body that receives a reviewable grant directly or indirectly; ("bénéficiaire d'une subvention"); reviewable grant" means a grant or other transfer payment from the Consolidated Revenue Fund, from an agency of the Crown or from a Crown controlled corporation; ("subvention susceptible d'examen").

Special audits

2.0 Grant recipients

9.1 (1) On or after April 1, 2005, the Auditor General may conduct a special audit of a grant recipient with respect to a reviewable grant received by the grant recipient directly or indirectly on or after the date on which the *Audit Statute Law Amendment Act, 2004* receives Royal Assent. 2004, c. 17, s. 12.

3.0 Exception

(2) Subsection (1) does not apply with respect to a grant recipient that is a municipality. 2004, c. 17, s. 12.

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[5] **NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.**
[6] **NTD: Consider if this is helpful from an accounting perspective.**

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

Commented [A9]: Flexibility allows discretion to consider the nature of the default.

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

[7] **NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.**

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable. **[NTD: Somewhat impractical as no rea] source to pay interest, but not offensive otherwise.]**

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

Commented [A10]: Practical limitations as the Trust is not ongoing program with expectations of receiving future funding.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

[8] **NTD: Discuss.**

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] **NTD: Consider further in the context of the Board of Trustees**

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

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SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[10]

[10] **Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.**

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports[11] will be [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situations that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

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Commented [A11]: Inserted (moved)

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[11] NTD: Confirm and conform frequency references.

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.10

RE_ TPA and Declaration of Trust Feedback.rtf

From: Qureshi, Musab (ENERGY) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: TPA and Declaration of Trust Feedback
Date: Monday, March 20, 2017 14:41:55
Attachment 1: image001.gif

Nadine- I didn't see any attachments to your email.

Musab

From: Petsche, Nadine (TBS)
Sent: March-20-17 2:04 PM
To: ASHBOURNE, STEPHEN; Schwab-Pflug, Emma (ENERGY)
Cc: PRESTAGE, JA; Johnson, Paul (ENERGY/MEDEI/MRI); Qureshi, Musab (ENERGY); Syed, Usman (ENERGY); Sermat-Harding, Kaili (ENERGY)
Subject: RE: TPA and Declaration of Trust Feedback

Stephen/Emma,

Please see comments on the revised TPA (looks great). Will provide comments on the Trust Declaration shortly. N

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March-20-17 1:02 PM
To: Johnson, Paul (ENERGY/MEDEI/MRI); Ranalli, David (ENERGY); Schachtschneider, Michelle (ENERGY); Qureshi, Musab (ENERGY); Schwab-Pflug, Emma (ENERGY); Syed, Usman (ENERGY); Petsche, Nadine (TBS)
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Declaration of Trust Feedback

Please see the updated versions of the Documents, attached. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
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From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to

reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

From: "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
Cc: "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
Subject: Fw: TPA and Deed Feedback

Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image001.pdf

Blakes

Draft: March 20, 2017

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

Commented [A1]: Yes, helpful per KPMG and OPCD

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] **NTD: Consider if this sort of fail-safe is helpful.**

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension. **[NTD: This is an exception to the rule that the Province will not be able to cause a change in the TPA. It was inserted to reflect the permitted extension of the Program discussed in the accounting context on Saturday. Please advise if not permitted or revise language to address concerns.]**

Commented [A2]: Will consider undertaking

Commented [A3]: Would any other changes still be subject to provincial consent? If yes, should refer to the appropriate clause. Mutual consent is not control, so should be ok. Could also include mirror clause that the Recipient is expected not to unreasonably withhold such consent?

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion as Trustee, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

Commented [A4]: Is expected to?

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it ~~will~~ is expected to do so through a process that promotes the best value for money and ~~will~~ to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that ~~will carry out~~ the Program and use, applicationy and distribution of~~e~~ the Funds without an actual, potential or perceived conflict of interest.

~~6.1~~6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

~~6.2~~6.3 ~~**Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest. [NTD: Consider from accounting perspective]~~

7.0 REPORTING, ACCOUNTING AND REVIEW

[2] **NTD: Consider in relation to promotional objectives and in the context of any License Agreement.**

[3] **NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?**

Commented [A5]: Inserted to address concern from provincial perspective. This together with quarterly report backs on COI should allow for some oversight, but not control over COI. If the Province is not controlling the trust, the only way to mitigate would be through audits which could also assess controls in place to mitigate this risk.

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Commented [A6]: With regards to footnotes:
- Consider using 'expected to' language when referencing actions of the LDCs (not in a position to direct anyway)
-With regards to COI – expectation would be that Trust would have a process in place to mitigate and deal with potential COI issues. (MOVED disclosure requirement to Schedule F)

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) [conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents as well as processes and controls in place to ~~nd information to~~ obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.] [NTD: Consider from accounting perspective]

Commented [A7]: Should be ok in accordance with OPCD's TP Guidance documentation

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor*

Commented [A8]: See extracts from the AG Act inserted for reference. AG can audit.

(a) [4] **NTD: Does the AG have any authority in respect of a non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the**

General Act (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

Province's compliance with this statute. References from the AG Act: "grant recipient" means an association, authority, board, commission, corporation, council, foundation, institution, organization or other body that receives a reviewable grant directly or indirectly; ("bénéficiaire d'une subvention"); reviewable grant" means a grant or other transfer payment from the Consolidated Revenue Fund, from an agency of the Crown or from a Crown controlled corporation; ("subvention susceptible d'examen").

Special audits

2.0 Grant recipients

9.1 (1) On or after April 1, 2005, the Auditor General may conduct a special audit of a grant recipient with respect to a reviewable grant received by the grant recipient directly or indirectly on or after the date on which the *Audit Statute Law Amendment Act, 2004* receives Royal Assent. 2004, c. 17, s. 12.

3.0 Exception

(2) Subsection (1) does not apply with respect to a grant recipient that is a municipality. 2004, c. 17, s. 12.

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[5] **NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.**
[6] **NTD: Consider if this is helpful from an accounting perspective.**

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

Commented [A9]: Flexibility allows discretion to consider the nature of the default.

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

[7] **NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.**

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable. **[NTD: Somewhat impractical as no rea] source to pay interest, but not offensive otherwise.]**

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

Commented [A10]: Practical limitations as the Trust is not ongoing program with expectations of receiving future funding.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

[8] **NTD: Discuss.**

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] **NTD: Consider further in the context of the Board of Trustees**

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

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SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[10]

[10] **Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.**

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports[11] will be [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situations that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

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Commented [A11]: Inserted (moved)

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[11] NTD: Confirm and conform frequency references.

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.10

RE_ TPA and Declaration (Bubble comments included).rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; RAND, PAUL [PAUL.RAND@blakes.com]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: TPA and Declaration (Bubble comments included)
Date: Sunday, March 19, 2017 13:48:24
Attachment 1: image46b5ab.GIF
Attachment 2: TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).DOCX
Attachment 3: TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX

In case it is useful, here are the revised versions (non blacklined), which preserve for the time being the 'track changes' comments received in the Friday mark-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent & Trade-mark Agents
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From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

> **From:** "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
> **To:** "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
> **Cc:** "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
> **Subject: Fw: TPA and Deed Feedback**
>
> Hello Stephen and Jay, please find attached Ministry of Energy comments attached.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
> Sent: Tuesday, March 14, 2017 7:51 PM
> To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
> Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
> Subject: FW: TPA and Deed Feedback
>
> Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image46b5ab.pdf

Blakes

TOR_2024-#12888010-v9-TPA_Draft_Afund_-_Blakes_Comments_(March_14_2017)_(2).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

Commented [A1]: OPC Comment: Principles seen as too prescriptive? For KPMG

Commented [A2]: KPMG Comment: Be careful to not be over prescriptive

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 **Supporting Documentation.** Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 **Extension.** The term of the Agreement may be extended by further agreement between the Parties.

3.3 **Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Limitation on Payment of Funds.** Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 **Use of Funds and Project.** The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

Commented [A3]: KPMG Comment: Be careful

Commented [A4]: KPMG Comment: Consistent wording

Commented [A5]: KPMG Comment: Too prescriptive- be careful

Commented [A6]: OPC Comment: Not sure how else a trust would work.
We have documented agreement with the OAG that says we can communicate to a TP recipient what the funds can be used for; however, an assessment of whether we control a recipient requires an additional lens be applied. Is this considered too detailed by KPMG?

Ministry comment: Please keep for now

Commented [A7]: KPMG Comment: This is good. But this is really administrative and does not negate the prescriptive terms

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** The Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

Commented [A8]: OPC Comment: General enough to not be a control factor? For KPMG

Commented [A9]: KPMG Comment: Don't like this. Why is this needed? Is this not a Trustee issue to discuss?

Commented [A10]: OPC Comment: Comment seems reasonable. Delete, but not major, especially since decisions would be by all of the Trustee board, and not individual trustees.

Ministry Comment: Please delete as per OPC recommendation

Commented [A11]: KPMG Comment Reporting is fine but watch details. Province should not control Trust activities

Commented [A12]: OPC Comment: Report backs and audits are standard inclusions in our TPAs. Consider including an intro that indicates why we need this – to monitor if policy objectives are being met (value for money)

Ministry Comment: Blakes- as per OPC comments, kindly revise

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

Commented [A13]: KPMG: why?

Commented [A14]: KPMG Comment: Be careful here

Commented [A15]: KPMG Comment: This looks like provincial control. Why does not just reporting cover thsi

Commented [A16]: OPC Comment: Agree that eliminating details w.r.t. audit would be better.

Commented [A17]: KPMG Comment: Why not just say "Trust"

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.
[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

Commented [A18]: Ministry Comment: Not needed any more – moved to precondition for funds release, schedule c

Commented [A19]: Osler comment: Change to determines

Commented [A20]: KPMG Comment: Delete. This is ruling from grave

Commented [A21]: Osler comment: control

Commented [A22]: OPC Comment: Please see correspondence between OPCD and the OAG on government transfers. Report backs, right to audit and right to recover funds that are spent for purposes other than intended are common and accepted elements of TPs.

Commented [A23]: OPC Comment: Fair comment by KPMG as they are not familiar with the Province's practices w.r.t. TPs. For discussion.

[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 **Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 **Debt Due.** If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 **Notice Given.** Notice will be deemed to have been given:

Commented [A24]: OPC Comment: Critical – is there a reason that the trust would be privy to different treatment than any other TP recipient?

Ministry Comment: Blakes please keep this language in for now

Commented [A25]: KPMG: Nope! Please delete. This is control

[8] NTD: Discuss.

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

Commented [A26]: KPMG Comment: Is his control? I am not a lawyer so not sure about "control implications". Don't think this is control, bust ask

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

Commented [A27]: KPMG Comment: WoW! This is ruling from grave

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

Commented [A28]: KPMG: Check with legal people. This can be control

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Commented [A29]: KPMG Comment: Be careful

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

Commented [A30]: KPMG Comment: Be careful! If the province no longer controls, this should be light

Commented [A31]: KPMG Comment: Really?

Commented [A32]: KPMG Comment: Would a normal charity agency be asked to do so much?

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

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RE_ TPA and Declaration (Bubble comments included).rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; RAND, PAUL [PAUL.RAND@blakes.com]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: TPA and Declaration (Bubble comments included)
Date: Sunday, March 19, 2017 13:48:24
Attachment 1: image46b5ab.GIF
Attachment 2: TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).DOCX
Attachment 3: TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX

In case it is useful, here are the revised versions (non blacklined), which preserve for the time being the 'track changes' comments received in the Friday mark-ups. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Deed Feedback

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

> **From:** "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
> **To:** "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
> **Cc:** "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
> **Subject: Fw: TPA and Deed Feedback**
>
> Hello Stephen and Jay, please find attached Ministry of Energy comments attached.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
> Sent: Tuesday, March 14, 2017 7:51 PM
> To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
> Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
> Subject: FW: TPA and Deed Feedback
>
> Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image46b5ab.pdf

Blakes

TOR_2024-#12888010-v9-TPA_Draft_Afund_-_Blakes_Comments_(March_14_2017)_(2).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

Commented [A1]: OPC Comment: Principles seen as too prescriptive? For KPMG

Commented [A2]: KPMG Comment: Be careful to not be over prescriptive

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 **Supporting Documentation.** Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 **Extension.** The term of the Agreement may be extended by further agreement between the Parties.

3.3 **Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Limitation on Payment of Funds.** Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 **Use of Funds and Project.** The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

Commented [A3]: KPMG Comment: Be careful

Commented [A4]: KPMG Comment: Consistent wording

Commented [A5]: KPMG Comment: Too prescriptive- be careful

Commented [A6]: OPC Comment: Not sure how else a trust would work.
We have documented agreement with the OAG that says we can communicate to a TP recipient what the funds can be used for; however, an assessment of whether we control a recipient requires an additional lens be applied. Is this considered too detailed by KPMG?

Ministry comment: Please keep for now

Commented [A7]: KPMG Comment: This is good. But this is really administrative and does not negate the prescriptive terms

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** The Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

Commented [A8]: OPC Comment: General enough to not be a control factor? For KPMG

Commented [A9]: KPMG Comment: Don't like this. Why is this needed? Is this not a Trustee issue to discuss?

Commented [A10]: OPC Comment: Comment seems reasonable. Delete, but not major, especially since decisions would be by all of the Trustee board, and not individual trustees.

Ministry Comment: Please delete as per OPC recommendation

Commented [A11]: KPMG Comment Reporting is fine but watch details. Province should not control Trust activities

Commented [A12]: OPC Comment: Report backs and audits are standard inclusions in our TPAs. Consider including an intro that indicates why we need this – to monitor if policy objectives are being met (value for money)

Ministry Comment: Blakes- as per OPC comments, kindly revise

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

Commented [A13]: KPMG: why?

Commented [A14]: KPMG Comment: Be careful here

Commented [A15]: KPMG Comment: This looks like provincial control. Why does not just reporting cover thsi

Commented [A16]: OPC Comment: Agree that eliminating details w.r.t. audit would be better.

Commented [A17]: KPMG Comment: Why not just say "Trust"

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.
[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

Commented [A18]: Ministry Comment: Not needed any more – moved to precondition for funds release, schedule c

Commented [A19]: Osler comment: Change to determines

Commented [A20]: KPMG Comment: Delete. This is ruling from grave

Commented [A21]: Osler comment: control

Commented [A22]: OPC Comment: Please see correspondence between OPCD and the OAG on government transfers. Report backs, right to audit and right to recover funds that are spent for purposes other than intended are common and accepted elements of TPs.

Commented [A23]: OPC Comment: Fair comment by KPMG as they are not familiar with the Province's practices w.r.t. TPs. For discussion.

[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 **Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 **Debt Due.** If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 **Notice Given.** Notice will be deemed to have been given:

Commented [A24]: OPC Comment: Critical – is there a reason that the trust would be privy to different treatment than any other TP recipient?

Ministry Comment: Blakes please keep this language in for now

Commented [A25]: KPMG: Nope! Please delete. This is control

[8] NTD: Discuss.

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

Commented [A26]: KPMG Comment: Is his control? I am not a lawyer so not sure about "control implications". Don't think this is control, bust ask

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

Commented [A27]: KPMG Comment: WoW! This is ruling from grave

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

Commented [A28]: KPMG: Check with legal people. This can be control

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Commented [A29]: KPMG Comment: Be careful

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

Commented [A30]: KPMG Comment: Be careful! If the province no longer controls, this should be light

Commented [A31]: KPMG Comment: Really?

Commented [A32]: KPMG Comment: Would a normal charity agency be asked to do so much?

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

Commented [A1]: KPMG Comment: Province's auditors need to sign off on this

Commented [A2]: OPC Comment: Agree that CFS will be subject to audit by the OAG. It would be helpful for KPMG to clarify the nature of their engagement w.r.t. providing an accounting opinion on whether the Trust would be controlled by either H1 or the Province.

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

Commented [A3]: Osler Comment: There is no need for an initial admin services agreement between Hydro One and Computershare

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

Commented [A4]: KPMG Comment:
So critical who appoints Trustees and if they are deemed to be able to act independently

Commented [A5]: OPC Comment: Intent is that the Province would not control either the original Trustee, the Advisory Committee or the Board of Trustees, once established.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

Commented [A6]: KPMG: Be careful. Terms of TPA could have clauses for "ruling from the grave"

Commented [A7]: OPC Comment: If in the future they change to give the government control, then would be reassessed at that time, but as at March 31st, would not be controlled.

Perhaps the process for amendments could be further discussed (not unilateral by the Province) and not expected to result in 'material' changes.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

Commented [A8]: KPMG Comment: Watch closely

Commented [A9]: OPC Comment: Blakes to share perspective to H1 and KPMG w.r.t. Trustees retaining discretion.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles

specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

Commented [A10]: Osler comment: maybe a trustee issue

OPC Comment:
See comment above re: Blakes (lawyers do not see this as an issue). Note that Oslers has suggested allowing for future changes in the Principles (which are not mandatory but rather guiding principles).

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

Commented [A11]: Osler comment: very uncertain

Commented [A12]: KPMG Comment: ok?

OPC Comment:
Would be helpful if KPMG could clarify any concerns.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[4]

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[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

[4] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes

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that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case

Commented [A13]: KPMG: Be careful with this

Commented [A14]: OPC Comment: Including original $100? KPMG to provide feedback on original construct (H1 to enter into agreement, no $ to flow from gov/H1), etc.

without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

Commented [A15]: KPMG Comment: Sounds reasonable. I am not concerned

Commented [A16]: OPC Comment: References to Travel and Meals directive were supposed to be 'aligned' with as opposed to mandatory.

Commented [A17]: KPMG comment: Be careful

(p) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and

correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

Commented [A18]: KPMG Comment: Be careful

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

Commented [A19]: KPMG Comment: Committee? So who is on the AC? This can be a concern that the province appoints non-independent Trustees

Ministry Comment: Advisory Committee will be independent of the government

Commented [A20]: OPC Comment: Advisory Committee concept worthy of more discussion to ensure well understood and agreed to as not impacting non-control.

Commented [A21]: Osler comment: Ac should be appointed by this document

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity

Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

Commented [A22]: OPC Comment: We all acknowledge that the following will be important to avoid perception of control. Not sure of the reference to previous comms?

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act

or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

Commented [A23]: KPMG Comment: So, what are these? Ruling from grave?

Commented [A24]: OPC Comment: Consider rewording to soften 'alignment' language –that any amendments are substantially aligned with the communicated guiding principles. KPMG to review revised language once drafted.

[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

[6] NTD: Consider and, if retained, integrate with Board concepts.

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to section 7.2, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

Commented [A25]: KPMG Comment: Must not be the Province

Ministry Comment: yes, Residual beneficiary is not the province

[7] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 [Except in exceptional circumstances,] a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be [a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

Commented [A26]: KPMG Comment: Province's auditors need to review

Commented [A27]: OPC Comment: Yes, OAG would review transaction as part of Public Accounts audit, against PSAB criteria of control and government transfers standard.

Commented [A28]: KPMG Comment: This is fine

Commented [A29]: OPC Comment: Question for KPMG…Is this language ok?

is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[8];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

Commented [A30]: Osler comment: Are these obligations, conditions or wishes?

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

Commented [A31]: Osler comment: It would be much more certain to se HAP + heat pumps

Ministry Comment: Please keep as is

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

[9] NTD: Ministry to confirm applicable Directive(s).

Commented [A32]: OPC Comment: Agree- change of wording would be advised so as to avoid perception of Trust being under control of the province.

Commented [A33]: KPMG Comment: Watch wording. Prefer "reports annually the results of its activities for info purposes"

Commented [A34]: Osler comment: Change to "undertaken"

Commented [A35]: Osler comment: control

Commented [A36]: Osler comment: Change to determines

Commented [A37]: KPMG Comment: Delete. This is ruling from grave

Commented [A38]: Osler comment: control

Commented [A39]: OPC Comment: Please see correspondence between OPCD and the OAG on government transfers. Report backs, right to audit and right to recover funds that are spent for purposes other than intended are common and accepted elements of TPs.

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: [(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

Commented [A40]: OPC Comment: KPMG to comment on specificity.

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity

Commented [A41]: OPC Comment: KPMG to comment on specificity.

Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. [NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee,

the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without

Commented [A42]: OPC Comment: It is expected that vs. shall

Commented [A43]: KPMG Comment: Define! What does this mean? Not sure any provincial representation is a good idea

Commented [A44]: OPC Comment: KPMG is familiar with PSAB's criteria of control. Government representation should be possible without compromising control. Transit trust has government representation.

limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of [six] trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

Commented [A1]: OPC Comment: Principles seen as too prescriptive? For KPMG

Commented [A2]: KPMG Comment: Be careful to not be over prescriptive

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 **Supporting Documentation.** Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 **Extension.** The term of the Agreement may be extended by further agreement between the Parties.

3.3 **Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 **Limitation on Payment of Funds.** Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 **Use of Funds and Project.** The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 **Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

Commented [A3]: KPMG Comment: Be careful

Commented [A4]: KPMG Comment: Consistent wording

Commented [A5]: KPMG Comment: Too prescriptive- be careful

Commented [A6]: OPC Comment: Not sure how else a trust would work.
We have documented agreement with the OAG that says we can communicate to a TP recipient what the funds can be used for; however, an assessment of whether we control a recipient requires an additional lens be applied. Is this considered too detailed by KPMG?

Ministry comment: Please keep for now

Commented [A7]: KPMG Comment: This is good. But this is really administrative and does not negate the prescriptive terms

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** The Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

Commented [A8]: OPC Comment: General enough to not be a control factor? For KPMG

Commented [A9]: KPMG Comment: Don't like this. Why is this needed? Is this not a Trustee issue to discuss?

Commented [A10]: OPC Comment: Comment seems reasonable. Delete, but not major, especially since decisions would be by all of the Trustee board, and not individual trustees.

Ministry Comment: Please delete as per OPC recommendation

Commented [A11]: KPMG Comment Reporting is fine but watch details. Province should not control Trust activities

Commented [A12]: OPC Comment: Report backs and audits are standard inclusions in our TPAs. Consider including an intro that indicates why we need this – to monitor if policy objectives are being met (value for money)

Ministry Comment: Blakes- as per OPC comments, kindly revise

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 **Record Maintenance.** The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 **Publication.** The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

Commented [A13]: KPMG: why?

Commented [A14]: KPMG Comment: Be careful here

Commented [A15]: KPMG Comment: This looks like provincial control. Why does not just reporting cover thsi

Commented [A16]: OPC Comment: Agree that eliminating details w.r.t. audit would be better.

Commented [A17]: KPMG Comment: Why not just say "Trust"

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.
[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

Commented [A18]: Ministry Comment: Not needed any more – moved to precondition for funds release, schedule c

Commented [A19]: Osler comment: Change to determines

Commented [A20]: KPMG Comment: Delete. This is ruling from grave

Commented [A21]: Osler comment: control

Commented [A22]: OPC Comment: Please see correspondence between OPCD and the OAG on government transfers. Report backs, right to audit and right to recover funds that are spent for purposes other than intended are common and accepted elements of TPs.

Commented [A23]: OPC Comment: Fair comment by KPMG as they are not familiar with the Province's practices w.r.t. TPs. For discussion.

[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 **Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 **Debt Due.** If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 **Failure to Repay.** Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 **Notice Given.** Notice will be deemed to have been given:

Commented [A24]: OPC Comment: Critical – is there a reason that the trust would be privy to different treatment than any other TP recipient?

Ministry Comment: Blakes please keep this language in for now

Commented [A25]: KPMG: Nope! Please delete. This is control

[8] NTD: Discuss.

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

Commented [A26]: KPMG Comment: Is his control? I am not a lawyer so not sure about "control implications". Don't think this is control, bust ask

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

Commented [A27]: KPMG Comment: WoW! This is ruling from grave

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

Commented [A28]: KPMG: Check with legal people. This can be control

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Commented [A29]: KPMG Comment: Be careful

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

Commented [A30]: KPMG Comment: Be careful! If the province no longer controls, this should be light

Commented [A31]: KPMG Comment: Really?

Commented [A32]: KPMG Comment: Would a normal charity agency be asked to do so much?

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.9

image001.pdf

Blakes

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Draft: March 20, 2017

DECLARATION OF TRUST

Made as of March ●, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (ii) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(s) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(t) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(u) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(v) "***Province***" means the Province of Ontario.

(w) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the [Ontario Energy Board] in accordance with section 3.3.

Commented [A1]: ok

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

Commented [A2]: is expected to? (language for consistency purposes)

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

Commented [A3]: Are expected to?

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries

regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder[1] and to the exclusion of the other potential Residual Beneficiaries.

Commented [A4]: Per footnote below, suggest including 'and potential allocations'?

Commented [A5]: I don't think we ever inserted language to require a final audit to confirm amount? (to ensure any outstanding liabilities are taken into account, for example)

Commented [A6]: Having considered the recommendations of the OEB

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

Commented [A7]: Subject to the consent of the Province which will not be unreasonably withheld, and provided in a timely fashion.

[1] **NTD:** Consider if principles should be included regarding the maximum amount any particular charity may receive.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

Commented [A8]: Restriction noted in the control analysis. Not major.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the

Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be

available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

Commented [A9]: Might the province want to include an item in the quarterly report back listing on any circumstances where this clause may be exercised? Since province is associated with the Trust, might be a good means to manage risks.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and

shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

Commented [A10]: Can we please check the language here (comply with)

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5,

collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the

Commented [A11]: This different term continues to appear. Should it be Committee?

Commented [A12]: Was there going to be explicit acknowledgment that the Trustee can seek external advice prior to accepting?

activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives, who would not be eligible to vote in any event as they are non-voting members). The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor ~~shall~~ would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

Commented [A13]: Specific, and in the public interest, but suggested wording change so not seen as Province directing Trust (consistent with other elements of doc).

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and

trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof.[2] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

Commented [A14]: Yes, would suggest adding back the Proviso, or that subject to the consent of the province which shall not be unreasonably withheld and which will be provide in a timely fashion.

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

[2] **NTD:** Add back the proviso?: "; provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex."

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

Commented [A15]: Subject to an audit to confirm amounts available for final distribution to Residual Beneficiaries?

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 **[Except in exceptional circumstances,]** a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement **[with an applicable Electricity Distributor]** to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be **[a HAP Eligible Person||eligible to receive amounts in respect of the Eligible Measures under HAP]**;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[3];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

Commented [A16]: Re: footnote – suggestive language might be included, but avoid 'shall'

[3] **NTD:** Consider if the Trustees should control the messaging to ensure consistency across the Province.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) **[the Ontario Energy Board];**

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) electricity cost savings **[NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].**

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) **is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;**

(iv) **is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;**

(v) **has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;**

(vi) **does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;**

(vii) **is the measure broadly available to residents across different areas and regions of the Province;**

(viii) **is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or**

(ix) **is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]**

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

Commented [A17]: Per comment above – could insert expectation that the Trust will provide comms materials for LDCs to use

3.2 **[NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]**

3.3 **[NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.]**

3.4 **[NTD: Insert any expectations regarding the observance of License Agreements]**

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the **[Trust][Affordability Fund]** and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the [~~**Province's Transfer Payment Accountability Directive**~~/**Travel, Meal and Hospitality Expenses Directive**[4]], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is **[determined][manifestly demonstrated by the Province]** that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.]

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

Commented [A18]: Deleted reference to TP Directive as not relevant.

Commented [A19]: So if these are not honoured then the Trust would be assessed as in 'material breach'. In other words, a material break is only in connection with these requirements? If yes, should 4.2 (1) refer specifically to the principles and delegation annex?

[4] **NTD:** Ministry to confirm applicable Directive(s).

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to **[March 31, 2019]**.

Commented [A20]: Confirm if Apr.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[5]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[5] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
• Polyurethane Air Sealant Foam, Part 1: Material Specification CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's ~~Transfer Payment Accountability Directive~~/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

Commented [A21]: Will send

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: **[(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].**

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, ~~would~~ might (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

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Commented [A22]: Suggest wording change (AG may feel this is very specific and indicative of control)

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary **[or group of related Primary Beneficiaries]** located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary **[or group of related Primary Beneficiaries]** located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

   i. **[NTD: Insert any specific items regarding the use of IP by Electricity Distributors]**

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

   i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

   ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

   i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

   ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. **[NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]**

   iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of

the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2) legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program; and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify **[six]** residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and

Formatted: Highlight

Commented [A23]: These individuals will not have an understanding of the electricity market – perhaps that needs to be acknowledged

empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual(s) who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of **[six]** trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

Commented [A24]: Who are they to make recommendations to, and what is needed for such recommendations to be accepted?

Commented [A25]: Unless the Trustee decides to retain them for other purposes, subject to their agreement.

RE_ TPA and Deed Feedback.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; RAND, PAUL [PAUL.RAND@blakes.com]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: TPA and Deed Feedback
Date: Sunday, March 19, 2017 13:41:40
Attachment 1: image324794.GIF
Attachment 2: TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).DOCX
Attachment 3: TOR_2024-#12888010-vpdf-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).PDF
Attachment 4: TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX
Attachment 5: TOR_2024-#12887993-vpdf-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).PDF

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

————————————————

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From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

From: "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
Cc: "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
Subject: Fw: TPA and Deed Feedback

Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image324794.pdf

Blakes

TOR_2024-#12888010-v9-TPA_Draft_Afund_-_Blakes_Comments_(March_14_2017)_(2).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 Use of Funds and Project. The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 Disclosure to Province. The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

---

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

---

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.
[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

---

[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

[8] NTD: Discuss.

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE “D”

Recipient’s Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule “C”) and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province’s Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province’s Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario’s Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.9

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below) ~~and~~, in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; ~~and~~

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust~~.~~; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"**Affordability Fund Trust**" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada ~~or~~, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) ~~The~~the Trustee is the trustee of the Affordability Fund Trust; and

(b) ~~The~~the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the ~~Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 10.2]~~Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 Use of Funds and Project. The Recipient will use, apply and distribute the Funds only for ~~the purpose contemplated by the Project, the Declaration of Trust and~~and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the

Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the ~~Project~~Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the ~~use~~Recipient's use, application or distribution of the Funds, or both.

~~**6.3 Disclosure to Province.** The Recipient will:~~

6.3 ~~(a)~~ **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest~~; and~~.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the ~~purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds~~Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section ~~7.3~~7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.

8.1 **Publication.** The Recipient will indicate, in any of its ~~Project~~Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 INSURANCE

10.1 ~~**Recipient's Insurance.** The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:~~**Insurance.** The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

~~(a) contractual liability coverage; and~~

~~(b) a 30 day written notice of cancellation.~~

~~**10.2** **Proof of Insurance.** The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 10.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.~~

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if ~~the Recipient breaches any representation, warranty, covenant or other term of this Agreement.~~:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the

[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.
[6] NTD: Consider if this is helpful from an accounting perspective.

Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) ~~recover any Funds~~require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement ~~at any time~~, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section ~~9.2(a),~~11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend ~~the~~any Notice ~~Period~~period, or initiate any one or more of the actions provided for in section 11.2.

[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

~~**11.5 When Termination Effective.** Termination under this Article will take effect as set out in the Notice.~~

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 (c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

[8] NTD: Discuss.

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

[9] NTD: Consider further in the context of the Board of Trustees

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4,~~7.5~~ 7.5, 7.6, Article 8.0, Article 12.0, Article ~~12.0~~14.0, Article ~~14.0,~~16.0, Article 17.0, Article ~~17.0~~19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	~~_____~~$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
~~**Insurance**~~	~~$2,000,000~~
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

~~The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.~~

~~SCHEDULE "D"~~

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. ~~Only actual (excluding HST) incurred~~The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

~~3.~~5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

~~4. Overhead expenses that are not directly related to the Recipient and establishment of the Affordability Fund should not be reimbursed.~~

~~5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.~~

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~X~~100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

~~Quarterly~~ Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 ~~o~~ Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.

26.0 ~~o~~ Total Affordability Fund interest accrued to date

27.0 ~~o~~ Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor

28.0 ~~o~~ Any challenges or modifications required to the application, funding, or eligibility processes/rules

29.0 ~~o~~ Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 ~~o~~ A description of electricity distributor application process and the criteria used by the Recipient to manage funds.

31.0 ~~o~~ Identify and describe any challenges with achieving goals and proposed solutions, if applicable.

32.0 ~~o~~ Lesson learned.

33.0 ~~o~~ Electricity distributor and customer feedback

34.0 ~~o~~ Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.

35.0 ~~o~~ Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor

36.0 ~~o~~ Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

~~12888010.5~~

12888010.9

Document comparison by Workshare Compare on Sunday, March 19, 2017 1:26:48 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12888010/5
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Document 2 ID	PowerDocs://TOR_2024/12888010/9
Description	TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14,_2017)_(2)
Rendering set	Standard

Legend:	
Insertion	
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Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	70
Moved from	11
Moved to	11
Style change	0
Format changed	0
Total changes	218

TOR_2024-#12887993-v15-Affordability_Fund_Trust_□Declaration_of_Trust_-_Blakes_Comments_(March_14_2017).pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles

specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[4]

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[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

[4] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes

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that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case

without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and

correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity

Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act

or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

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[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

[6] NTD: Consider and, if retained, integrate with Board concepts.

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to section 7.2, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

[7] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 [Except in exceptional circumstances,] a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be [a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[8];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

[9] NTD: Ministry to confirm applicable Directive(s).

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures

for Buildings

Wall Insulation (including installation):

cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Basement Insulation (including installation):

mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings

Vapour Barrier: 69009-CAN/CGSB-51.34-m86

If one or two component polyurethane foams are used, the products and installations must conform to:

- CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification.
- CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application.
- CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification
- CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps

(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)

Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: [(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity

Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. [NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee,

the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without

limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of [six] trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of ~~the~~ same on and subject to the provisions ~~contained~~set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust ~~with an~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the ~~purpose of the Trust described in section 2.1 of this Declaration~~Purpose, under which the Administrative Services Agent ~~agrees~~would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) ~~(iii)~~ all property which may at any time be substituted ~~therefor;~~

~~(iv)~~ ~~all capital depreciations to or acquisitions by the Trust;~~for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes ~~anything~~any property paid out or distributed (whether out of income or capital) ~~in the normal course of administration or~~ pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) ~~(e)~~ "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, ~~including each of the Annexes hereto~~and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) ~~(f)~~ "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the ~~distributer~~distributor of electricity to residences located in such area or region.

(i) ~~(g)~~ "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) ~~(h)~~ "***Eligible Investments***" means ~~[~~(i) a deposit ~~instruments or accounts~~receipt, note, certificate or instrument issued, guaranteed or ~~established by one or more Schedule I Canadian chartered banks].~~endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which

provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) ~~(i)~~ "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time~~, as more particularly determined in accordance with~~ on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) ~~(j)~~ "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the ~~TPA~~Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) ~~(k)~~ "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, ~~2016.~~2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) ~~(l)~~ "***Minister of Energy***" means the Minister ~~under the Ontario *Electricity Act*, *1998*, S.O. 1998, as amended~~of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) ~~(m)~~ "***Original Trustee***" means Computershare Trust Company of Canada ~~and any successor~~, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) ~~(n)~~ "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(s) ~~(o)~~ "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) ~~(p)~~ "***Principles Annex***" means the ~~annex entitled~~ Principles Annex ~~attached~~set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) ~~(q) "*Permitted Delegations Annex*" means the annex entitled Permitted Delegations Annex attached to this Declaration.~~"***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ~~(r) **"Residual Beneficiary"**~~ means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time ~~from among the list of charitable organizations specified on Schedule • (or their respective successor charitable organizations).~~, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) ~~(s)~~ "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) ~~(t)~~ "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) ~~(u)~~ "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees ~~appointed by the Original Trustee pursuant to Section • on the basis described in the Trustee Replacement Annex.~~acting together in accordance with and

subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) ~~(v)~~ "***Trustee Replacement Annex***" means the ~~annex entitled~~ Trustee Replacement Annex ~~attached~~set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto~~,~~" "herein~~,~~" "hereof~~,~~" "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. ~~No~~Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) ~~The Trust is established for the sole purpose of providing holding and applying the Assets for the benefit of the Beneficiaries as provided in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the Trustee determines that the Assets are to be distributed~~the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard ~~and in accordance the Principles Annex, or otherwise to the Residual Beneficiary, in each case~~to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with ~~this Declaration.~~Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such ~~other~~ designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee ~~determined~~may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 ~~in~~of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to ~~Identified~~ Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 ~~Maximum Amount of Distributions to Primary Beneficiaries~~Amount of Distributions to Primary Beneficiaries

~~The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not exceed the costs (including applicable taxes) incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied in respect of the Primary Beneficiary's Ontario residence. An amount distributed by the Trustee to a Primary Beneficiary shall not include any amount that would allow an Electricity Distributor to earn a profit.~~

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

~~On~~Prior to the Final Distribution Date, the Trustee shall ~~distribute~~identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) ~~to the Residual~~

~~Beneficiaries~~existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ~~(b)~~ ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.~~1~~[14]

(f) ~~(c)~~ ***Power to Manage and Invest.*** ~~The Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.~~[2] ~~The Trustee shall have the power to invest the Assets in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.~~ ***Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) ~~(d)~~ ~~***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing,~~ the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for ~~any of them. The Trustee may pay remuneration from the Assets for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person~~or for the actions of any of them, including to:

[14] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

~~[2] Consider limiting this broad power.~~

(A) ~~(i) to~~ act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any ~~related~~other agreements and contracts~~;~~ to which the Trust becomes a party in accordance with this Declaration;

(B) ~~(ii)~~ to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) ~~(iii)~~ to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust; ~~and~~

(D) ~~(iv)~~ to value the Assets and determine the net income of the Trust~~.~~; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, ~~the Trustee may~~it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such ~~other~~ terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ~~(c)~~ ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; ~~to~~(ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; ~~to~~(iii) withdraw such deposits at such times and in such manner as the Trustee may determine; ~~to~~(iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; ~~to~~and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable~~; and~~. In connection

therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ~~(f)~~ ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; ~~to~~(ii) consent to extensions of time for payment or to the renewal of any securities or obligations; ~~to~~(iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; ~~to~~(iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law ~~and,~~; (v) in connection with any such foreclosure or sale, ~~to~~ purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; ~~to~~(vi) extend the time, with or without security, for the payment or delivery of any debts or property ~~and to~~; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and ~~to~~(viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ~~(g)~~ ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive ~~reasonable fees from the Assets~~the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time ~~funds~~ for such purpose from any account of the Trust. ~~The Successor Trustee~~Members of the Board of Trustees shall be entitled to reimbursement for ~~its~~and in respect of their out-of-pocket expenses reasonably incurred in discharging ~~its services~~their respective duties and obligations under this Declaration~~,~~ and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, ~~but subject to the~~ provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province~~, a copy~~" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ~~(h)~~ ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; ~~to~~(ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; ~~to~~(iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; ~~to~~(iv) appeal, settle or compromise tax claims or liabilities; and~~,~~ (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ~~(i)~~ ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ~~(j)~~ ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep ~~and~~or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ~~(k)~~ ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ~~(l)~~ ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including~~, without limitation,~~ to one or more Administrative Services Agents and their respective employees, officers and directors~~, in each case~~ under a related Administrative Services Agreement ~~and~~entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. ~~The~~In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with ~~clauses 4(a)(i) to 4(a)(vi) of~~ the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (~~a~~1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex ~~at~~as of the applicable time of determination; and/or (~~b~~ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements ~~of~~set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ~~(m)~~ ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section ~~5.2~~ shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. ~~Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability.~~ However, the foregoing limitations in this Section ~~5.3~~ shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in ~~Section~~section 5.9. Further, except as provided in ~~Section~~section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this ~~Section~~section 5.5 shall survive any termination of the Trust ~~created hereby~~, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to ~~Section~~section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of ~~the~~any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ~~Resignation~~Replacement of the Original Trustee

~~On or before •, 2017 or as soon thereafter as is practicable,~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall ~~receive the recommendations of the Advisory Committee contemplated by and for the purposes described in~~appoint the Persons contemplated by the Trustee Replacement Annex ~~(the "**Advisory Committee**") and, in accordance with the procedures set forth in~~to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex~~ and upon being satisfied that the persons recommended to become members of the Advisory Committee satisfy the criteria~~. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint~~ as additional Trustees [number] of individuals recommended~~, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [~~number] additional trustees~~six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee~~. [Insert bare bones governance for the Board's initial purposes.]~~ (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 ~~Appointment of Successor Trustee~~Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting

shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ~~[Add governance provisions to permit remaining trustees~~***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising ~~after Board of Trustees is first constituted under Section 5.7 and to prohibit last trustee from resigning until replacement appointed, subject to an~~following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.~~]~~

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred

in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this ~~Section [~~section 5.9~~]~~ shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had ~~been~~ originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section ~~5.10,~~5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of ~~Documents~~Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust.[3] Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

[3] ~~Consider extending this power to the Administrative Services Agent.~~

[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 ~~Amendment~~Amendments

~~The~~Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing ~~and in addition to the principles and procedures set forth in the Principles Annex and the Permitted Delegation Annex~~, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add ~~additional Trustees;~~provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) ~~(b)~~ include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures ~~for meetings~~governing the decision-making of the Board of Trustees;

(h) ~~(c)~~ add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) ~~(d)~~ provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

[6] NTD: Consider and, if retained, integrate with Board concepts.

(j) ~~(e)~~ specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries ~~who will be the recipients~~; or

(k) ~~(f)~~ specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to~~,~~ or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to ~~this Section 6.~~section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to ~~Section 7.3, [and Section~~section 7.2~~]~~, the Trust will continue in full force and effect so long as there ~~is~~are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[47]

~~**7.2 [Termination for Non-Performance**~~

~~**[NTD: Mechanism to address non-performance by Trustees?]**~~

7.2 ~~7.3~~ Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs ~~not later than [December 31, 2037~~as soon as practicable after the Final Distribution Date~~] (the "**Termination Date**"). Upon~~. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual ~~Beneficiary. [NTD: This section subject to ongoing review.]~~Beneficiaries, in each case in accordance with section 3.3.

7.3 ~~7.4~~ Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual ~~Beneficiary on such date.~~Beneficiaries in accordance with Section 3.3.

[47] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles ~~apply~~in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 ~~A~~[Except in exceptional circumstances,] a Primary Beneficiary ~~should~~would not be expected to receive a ~~payment~~benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection ~~Criteria~~Factors**"):

~~(i) it is an [owner-occupied,] [non-commercial] electricity customer;~~

(i) ~~(ii)~~ it has ~~[committed] [made arrangements] [proposed] [indicated its willingness~~a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) ~~(iii)~~ its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) ~~(iv)~~ it confirms that :

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. ~~(v)~~ it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. ~~(vi) the Eligible Measures to be undertaken by it under its Energy Plan~~it would ~~not~~ otherwise not be ~~eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a governmental agency~~[a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) ~~(vii)~~ it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) ~~(viii) Such~~such other criteria as the Trustee may determine ~~after consultation with~~, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 ~~The availability of~~It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries ~~should be allocated on an equitable and consistent basis~~ across different areas and regions within ~~the Province, having regard to:~~Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need~~.~~; and

(iv) ~~1.3 An efficient basis upon which to allocate funds to the Beneficiaries across different areas and regions within the Province will be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.~~ such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 ~~The~~It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides ~~will~~would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether ~~a~~ the Primary Beneficiary satisfies the Selection ~~Criteria~~Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of ~~[Project]~~Program[8];

(iii) be able to ~~efficiently integrate and reflect any~~facilitate an efficient payment of distribution ~~payments~~ determined to be made to or on behalf of the Primary Beneficiary ~~within its~~, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

Primary Beneficiary satisfies the Selection ~~Criteria~~Factors, which information may not otherwise be available or readily accessible ~~by the Trustee.~~or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 ~~The designated~~It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its ~~designated~~ area or region. Such information ~~will~~is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the ~~Purposes of the Trust~~Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries ~~for~~in making distributions ~~under~~to the ~~[Project]~~Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection ~~Criteria~~Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in ~~the Province~~Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection ~~Criteria~~Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the ~~[Project]~~Program. If such limitations or restrictions would limit an Electricity ~~Distributors~~Distributor from providing or confirming the name of a particular Primary Beneficiary~~,~~ to the Trustee, then it should be sufficient that such

information may be obtained or disseminated on a confidential basis ~~and~~if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the ~~[Project] to the extent~~Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures ~~Criteria~~Factors**"):

(i) ~~[~~electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures ~~Criteria~~Factors, Electricity Distributors ~~will~~would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the

climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the ~~following~~ measures ~~will be considered Eligible Measures: See Schedule A~~ specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. ~~Other~~Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 ~~3.1~~ It is expected that administrative expenses of the ~~Trustee~~Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to ~~delivery of the program by~~the implementation and operation of the Program, including by or through Electricity Distributors~~, will be in accordance~~ and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][~~5~~9], ~~in~~ the current form of which attached as Schedule B to this Principles Annex ~~as Exhibit 1.~~ .

4.2 ~~3.2~~ The Trustee is expected to conduct its activities ~~to ensure that~~in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) ~~public funds are spent~~act prudently and in furtherance of the Purpose;

(ii) ~~the Trustee is accountable~~report annually the results of its activities for information purposes to the Province ~~for program activities~~in connection with the Program;

[~~5~~9] NTD: Ministry to confirm applicable Directive(s).

(iii) ~~it complies~~comply with the Province's request for any independent verification~~/audit~~ or audit if determined to be necessary or appropriate by the Province;

(iv) ~~the Province can recover the funds if they are not being used for the purposes intended.~~return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

4.3 ~~3.3 It is expected that~~ Electricity Distributors ~~will~~are not intended to directly profit from distributions ~~made from the Trust~~of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 ~~3.4 It is expected that distributions~~Distributions from the Trust ~~will~~are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 ~~3.5 It~~Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets ~~will~~would be distributed ~~between April 1, 2017 and March 31, 2019.~~to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

~~Basic~~Initial Specified **Measures**
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

~~Basic~~Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
~~12-14.4 cubic foot freezer~~
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
~~certification mark~~
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier ~~dehumidifier dehumidifier~~
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

~~**[NTD: Add details pertaining to heat pumps]**~~

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

~~EXHIBIT 1~~SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under ~~Section~~section 4.2(~~d~~g) of the Declaration, the Trustee has the power to: [(~~A~~a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (~~B~~b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with ~~Section~~section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under ~~Section~~section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. ~~Without limitation, the Administrative Services Agreements may provide for the following:~~Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor ~~will~~would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to ~~[~~the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data~~]~~, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the ~~selection factors set forth under clause 1.1 ["Identification of Beneficiary Payees"] in the Principles Annex~~Selection Factors.

        ii. Each Electricity Distributor ~~will~~would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to ~~[considerations]~~the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of

the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor ~~will~~would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates ~~may~~would be utilized under the ~~[Project]~~Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation ~~will~~would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by ~~"[Insert]" under the Principles Annex, which will~~the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of ~~the Province of~~ Ontario ~~(the "**Province**")~~.

iv. The Trustee ~~will~~would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the ~~[Project]~~Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each ~~LDC~~Electricity Distributor, its "**Maximum ~~LDC~~Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum ~~LDC Amount~~Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee~~,~~ from time to time in its discretion.

v. Each Electricity Distributor ~~will~~would apply the principles set forth under ~~[~~"Identification of Primary Beneficiary Payees" in the Principles Annex~~]~~ to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its ~~designated~~ service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor ~~will~~would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum ~~LDC~~Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the ~~servicer~~service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum ~~Beneficiary Amount~~Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any

amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee ~~will~~would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. ~~2.~~ The identity of ~~each~~such Primary Beneficiary Payee ~~resident in the Electricity Distributor's service area or region and its residential address;~~; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. ~~3. The amount of the distribution to be paid to or for the benefit of each such Beneficiary Payee.~~If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in ~~a~~an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee ~~will~~would arrange for payment to or on the

direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to ~~a~~be made to a Primary Beneficiary Payee, the Electricity Distributor ~~will~~would arrange for payment of the full amount of such distribution to or for the benefit of the ~~Beneficiary Payee~~Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. ~~c.~~ **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor ~~will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the~~would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor ~~will~~would keep and maintain all financial records and non-financial documents and records relating to the provision of services under ~~the~~its Administrative Services Agreement. [~~Specify required~~NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. ~~iii.~~ The Trustee, its authorized representatives or an independent auditor ~~may~~would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its ~~process~~processes for ~~determining~~recommending the Primary Beneficiary Payees~~,~~ and their respective distribution amounts and regarding the delivery of Trust funds ~~to [or for the benefit of] the Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Beneficiary Payees, the amount of distributions made to or for the benefit of the Beneficiary Payees; and the delivery of funds to or for the benefit of the Beneficiary Payees.~~on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. ~~d.~~ **Standard of Care**

i. The Electricity Distributor ~~will~~would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the

degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor ~~will~~would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. ~~e.~~ **Expenses**

~~i.~~ The Electricity Distributor ~~will~~would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements ~~will~~would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

~~[Other matters you may consider dealing with here include~~ *[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law~~/confidentiality/legal considerations and~~ requirements~~;~~/ money laundering~~; preparation of accounting and tax statements by the Trust; compliance with regulatory~~ laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;~~ appropriate reps and indemnities from LDCs; specific reporting of cash and allocations;~~(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of*

information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries~~; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA;~~ (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the ~~[Project];~~Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members ~~may~~of the Advisory Committee would appoint ~~a~~another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify ~~[number~~[six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees ~~of the Affordability Fund Trust~~ and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) ~~Demonstrate~~each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) ~~Have~~each member demonstrates an expertise in conservation and low income ~~electricity support~~ programs;~~\~~

   c) ~~Are geographically representative; and~~three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) ~~Include~~it is expected that representation ~~from a cross-section of electricity distributor sizes.~~ by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. ~~4.~~ The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become ~~replacement~~the initial members of the Board of Trustees ~~of the Affordability Fund Trust~~ pursuant to section 5.7 of the Declaration.

6. ~~5.~~ If any of the ~~persons~~individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section ~~[~~5.7~~]~~ of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a ~~Trustee~~member of the Board of Trustees would result in the ~~Trustees~~Trustee collectively satisfying the criteria in paragraph 2 above.

7. ~~6.~~ Upon the appointment of [~~number~~six] trustees (five voting and one non-voting) pursuant to section ~~.~~5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Sunday, March 19, 2017 1:26:00 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/10
Description	TOR_2024-#12887993-v10-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/15
Description	TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	696
Deletions	441
Moved from	19
Moved to	19
Style change	0
Format changed	0

Total changes	1175

RE_ TPA and Deed Feedback.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; RAND, PAUL [PAUL.RAND@blakes.com]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: TPA and Deed Feedback
Date: Sunday, March 19, 2017 13:41:40
Attachment 1: image324794.GIF
Attachment 2: TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).DOCX
Attachment 3: TOR_2024-#12888010-vpdf-TPA_Draft_Afund__-_Blakes_Comments_(March_14__2017)_(2).PDF
Attachment 4: TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX
Attachment 5: TOR_2024-#12887993-vpdf-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).PDF

Hi everyone. Here are revised versions of the Declaration and the TPA, which try to reflect the consolidated comments passed on over the past few days. Please note that the attached blacklines show changes back to the versions of these documents we last circulated (early Thursday, see below). I appreciate that you may have been working with a later version, but I have gone back to the earlier versions so we can get everyone onto the same page. Also, please let me know if you would like to see the cumulative bubble notes (Track Changes) from earlier versions – we can generate these separately if useful, but our 'cleaning software' has automatically deleted these in making this particular circulation of documents. Lastly, I do not have Michel (KPMG)'s coordinates (I was copied into the appointment yesterday so my invite does not include all of the attendees). Would one of you please forward this to Michel (cc. me) and anyone else who should be looking at these drafts at this time. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

————————————————

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From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

From: "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
Cc: "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
Subject: Fw: TPA and Deed Feedback

Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
Subject: FW: TPA and Deed Feedback

Hi David, Paul,

Find attached our comments on Blake's edits and comments on the TPA and the Trust Declaration. Also attached is the one time AG guidance on accounting principles (we realize Blakes may already have this, but OPCD's comments refer to this document).

Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

image324794.pdf

Blakes

TOR_2024-#12888010-v9-TPA_Draft_Afund_-_Blakes_Comments_(March_14_2017)_(2).pdf

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 Use of Funds and Project. The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 Disclosure to Province. The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

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[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

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[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.
[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

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[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

[8] NTD: Discuss.

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE “D”

Recipient’s Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule “C”) and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province’s Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province’s Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario’s Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.9

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below) ~~and~~, in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive; ~~and~~

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust~~.~~; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"**Affordability Fund Trust**" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada ~~or~~, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) ~~The~~the Trustee is the trustee of the Affordability Fund Trust; and

(b) ~~The~~the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the ~~Recipient provides the insurance certificate or other proof as the Province may request pursuant to [section 10.2]~~Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 Use of Funds and Project. The Recipient will use, apply and distribute the Funds only for ~~the purpose contemplated by the Project, the Declaration of Trust and~~and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the

Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the ~~Project~~Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or

(b) any person who has the capacity to influence the Recipient's decisions[3],

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the ~~use~~Recipient's use, application or distribution of the Funds, or both.

~~**6.3 Disclosure to Province.** The Recipient will:~~

6.3 ~~(a)~~ **Disclosure to Province.** The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest~~; and~~.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the ~~purposes of the Project and regarding the Recipient's allocation and expenditure of the Funds~~Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section ~~7.3~~7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.

8.1 **Publication.** The Recipient will indicate, in any of its ~~Project~~Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 INSURANCE

10.1 ~~**Recipient's Insurance.** The Recipient represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person similar to the Recipient would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount set out in Schedule "B" per occurrence. The policy will include the following:~~**Insurance.** The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

~~(a) contractual liability coverage; and~~

~~(b) a 30 day written notice of cancellation.~~

~~**10.2** **Proof of Insurance.** The Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 10.1. Upon the request of the Province, the Recipient will make available to the Province a copy of each insurance policy.~~

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 **Events of Default.** An Event of Default will occur if ~~the Recipient breaches any representation, warranty, covenant or other term of this Agreement.~~:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the

[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.
[6] NTD: Consider if this is helpful from an accounting perspective.

Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) ~~recover any Funds~~require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement ~~at any time~~, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section ~~9.2(a),~~11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend ~~the~~any Notice ~~Period~~period, or initiate any one or more of the actions provided for in section 11.2.

[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

~~**11.5 When Termination Effective.** Termination under this Article will take effect as set out in the Notice.~~

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2 (c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

[8] NTD: Discuss.

16.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 **Declaration of Trust.** The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

21.0 JOINT AND SEVERAL LIABILITY

21.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

[9] NTD: Consider further in the context of the Board of Trustees

23.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4,~~7.5~~ 7.5, 7.6, Article 8.0, Article 12.0, Article ~~12.0~~14.0, Article ~~14.0,~~16.0, Article 17.0, Article ~~17.0~~19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	~~_____~~$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
~~**Insurance**~~	~~$2,000,000~~
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

~~The Project will be completed subject to the requirements of the Budget and in accordance with the Principles set forth in Annex A.~~

~~SCHEDULE "D"~~

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. ~~Only actual (excluding HST) incurred~~The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

~~3.~~5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province's Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

   - Meals, snacks and beverages
   - Gratuities
   - Laundry or dry cleaning
   - Valet services
   - Dependent care
   - Home management
   - Personal telephone calls

~~4. Overhead expenses that are not directly related to the Recipient and establishment of the Affordability Fund should not be reimbursed.~~

~~5. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.~~

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ ~~X~~100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

~~Quarterly~~ Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 ~~o~~ Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.

26.0 ~~o~~ Total Affordability Fund interest accrued to date

27.0 ~~o~~ Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor

28.0 ~~o~~ Any challenges or modifications required to the application, funding, or eligibility processes/rules

29.0 ~~o~~ Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 ~~o~~ A description of electricity distributor application process and the criteria used by the Recipient to manage funds.

31.0 ~~o~~ Identify and describe any challenges with achieving goals and proposed solutions, if applicable.

32.0 ~~o~~ Lesson learned.

33.0 ~~o~~ Electricity distributor and customer feedback

34.0 ~~o~~ Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.

35.0 ~~o~~ Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor

36.0 ~~o~~ Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

~~12888010.5~~

12888010.9

Document comparison by Workshare Compare on Sunday, March 19, 2017 1:26:48 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12888010/5
Description	TOR_2024-#12888010-v5-TPA_Draft_Afund__-_Blakes_Comments_(March_14,_2017)_(2)
Document 2 ID	PowerDocs://TOR_2024/12888010/9
Description	TOR_2024-#12888010-v9-TPA_Draft_Afund__-_Blakes_Comments_(March_14,_2017)_(2)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	126
Deletions	70
Moved from	11
Moved to	11
Style change	0
Format changed	0
Total changes	218

TOR_2024-#12887993-v15-Affordability_Fund_Trust_□Declaration_of_Trust_-_Blakes_Comments_(March_14_2017).pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles

specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[4]

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[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

[4] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes

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that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case

without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and

correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity

Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act

or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

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[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

[6] NTD: Consider and, if retained, integrate with Board concepts.

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to section 7.2, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

[7] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 [Except in exceptional circumstances,] a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be [a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[8];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

[9] NTD: Ministry to confirm applicable Directive(s).

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures

for Buildings

Wall Insulation (including installation):

cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Basement Insulation (including installation):

mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings

Vapour Barrier: 69009-CAN/CGSB-51.34-m86

If one or two component polyurethane foams are used, the products and installations must conform to:

- CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification.
- CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application.
- CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification
- CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps

(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)

Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: [(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity

Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. [NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee,

the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without

limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of [six] trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of ~~the~~ same on and subject to the provisions ~~contained~~set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust ~~with an~~and one or more Administrative Services ~~Agent~~Agents or other Persons, in furtherance of the ~~purpose of the Trust described in section 2.1 of this Declaration~~Purpose, under which the Administrative Services Agent ~~agrees~~would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) ~~(iii)~~ all property which may at any time be substituted ~~therefor;~~

~~(iv)~~ ~~all capital depreciations to or acquisitions by the Trust;~~for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes ~~anything~~any property paid out or distributed (whether out of income or capital) ~~in the normal course of administration or~~ pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) ~~(e)~~ "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, ~~including each of the Annexes hereto~~and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) ~~(f)~~ "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the ~~distributer~~distributor of electricity to residences located in such area or region.

(i) ~~(g)~~ "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) ~~(h)~~ "***Eligible Investments***" means ~~[~~(i) a deposit ~~instruments or accounts~~receipt, note, certificate or instrument issued, guaranteed or ~~established by one or more Schedule I Canadian chartered banks].~~endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which

provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) ~~(i)~~ "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time~~, as more particularly determined in accordance with~~ on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) ~~(j)~~ "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the ~~TPA~~Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) ~~(k)~~ "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, ~~2016.~~2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) ~~(l)~~ "***Minister of Energy***" means the Minister ~~under the Ontario *Electricity Act*, *1998*, S.O. 1998, as amended~~of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) ~~(m)~~ "***Original Trustee***" means Computershare Trust Company of Canada ~~and any successor~~, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) ~~(n)~~ "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(s) ~~(o)~~ "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) ~~(p)~~ "***Principles Annex***" means the ~~annex entitled~~ Principles Annex ~~attached~~set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) ~~(q) "*Permitted Delegations Annex*" means the annex entitled Permitted Delegations Annex attached to this Declaration.~~"***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ~~(r) **"Residual Beneficiary"**~~ means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time ~~from among the list of charitable organizations specified on Schedule • (or their respective successor charitable organizations).~~, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) ~~(s)~~ "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) ~~(t)~~ "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) ~~(u)~~ "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees ~~appointed by the Original Trustee pursuant to Section • on the basis described in the Trustee Replacement Annex.~~acting together in accordance with and

subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) ~~(v)~~ "***Trustee Replacement Annex***" means the ~~annex entitled~~ Trustee Replacement Annex ~~attached~~set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto~~,~~" "herein~~,~~" "hereof~~,~~" "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. ~~No~~Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) ~~The Trust is established for the sole purpose of providing holding and applying the Assets for the benefit of the Beneficiaries as provided in this Declaration. The activities of the Trust shall be to hold the Assets as contemplated in this Declaration until such time as the Trustee determines that the Assets are to be distributed~~the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard ~~and in accordance the Principles Annex, or otherwise to the Residual Beneficiary, in each case~~to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with ~~this Declaration.~~Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such ~~other~~ designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee ~~determined~~may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 ~~in~~of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to ~~Identified~~ Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 ~~Maximum Amount of Distributions to Primary Beneficiaries~~Amount of Distributions to Primary Beneficiaries

~~The amount distributed by the Trustee to or for the benefit of any Primary Beneficiary shall not exceed the costs (including applicable taxes) incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied in respect of the Primary Beneficiary's Ontario residence. An amount distributed by the Trustee to a Primary Beneficiary shall not include any amount that would allow an Electricity Distributor to earn a profit.~~

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

~~On~~Prior to the Final Distribution Date, the Trustee shall ~~distribute~~identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) ~~to the Residual~~

~~Beneficiaries~~existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ~~(b)~~ ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.~~1~~[14]

(f) ~~(c)~~ ***Power to Manage and Invest.*** ~~The Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.~~[2] ~~The Trustee shall have the power to invest the Assets in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. The Trustee shall not be limited to investments authorized by law for trustees. The Trustee will have no liability for the depreciation of any investment.~~ ***Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) ~~(d) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing,~~ the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for ~~any of them. The Trustee may pay remuneration from the Assets for all services performed for it in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney. Without limiting the generality of the forgoing, the Trustee may appoint, employ or retain any Person~~or for the actions of any of them, including to:

[14] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

~~[2] Consider limiting this broad power.~~

(A) ~~(i) to~~ act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any ~~related~~other agreements and contracts~~;~~ to which the Trust becomes a party in accordance with this Declaration;

(B) ~~(ii)~~ to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) ~~(iii)~~ to act as attorney in fact, agent or trustee in the ~~purchase~~acquisition, holding ~~or~~, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust; ~~and~~

(D) ~~(iv)~~ to value the Assets and determine the net income of the Trust~~.~~; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, ~~the Trustee may~~it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such ~~other~~ terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ~~(c)~~ ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; ~~to~~(ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; ~~to~~(iii) withdraw such deposits at such times and in such manner as the Trustee may determine; ~~to~~(iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; ~~to~~and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable~~; and~~. In connection

therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ~~(f)~~ ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; ~~to~~(ii) consent to extensions of time for payment or to the renewal of any securities or obligations; ~~to~~(iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; ~~to~~(iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law ~~and,~~; (v) in connection with any such foreclosure or sale, ~~to~~ purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; ~~to~~(vi) extend the time, with or without security, for the payment or delivery of any debts or property ~~and to~~; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and ~~to~~(viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ~~(g)~~ ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive ~~reasonable fees from the Assets~~the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time ~~funds~~ for such purpose from any account of the Trust. ~~The Successor Trustee~~Members of the Board of Trustees shall be entitled to reimbursement for ~~its~~and in respect of their out-of-pocket expenses reasonably incurred in discharging ~~its services~~their respective duties and obligations under this Declaration~~,~~ and any contract of the Trust entered into in accordance with this Declaration, in each case without the approval of any Beneficiary or any court, ~~but subject to the~~ provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province~~, a copy~~" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ~~(h)~~ ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; ~~to~~(ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; ~~to~~(iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; ~~to~~(iv) appeal, settle or compromise tax claims or liabilities; and~~,~~ (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ~~(i)~~ ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ~~(j)~~ ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep ~~and~~or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ~~(k)~~ ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ~~(l)~~ ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including~~, without limitation,~~ to one or more Administrative Services Agents and their respective employees, officers and directors~~, in each case~~ under a related Administrative Services Agreement ~~and~~entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. ~~The~~In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with ~~clauses 4(a)(i) to 4(a)(vi) of~~ the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (~~a~~1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex ~~at~~as of the applicable time of determination; and/or (~~b~~ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements ~~of~~set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ~~(m)~~ ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with respect to any obligation under this Declaration. However, the foregoing limitations in this Section ~~5.2~~ shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. ~~Each such document or instrument shall contain a provision providing for the aforesaid limitation of liability.~~ However, the foregoing limitations in this Section ~~5.3~~ shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in ~~Section~~section 5.9. Further, except as provided in ~~Section~~section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this ~~Section~~section 5.5 shall survive any termination of the Trust ~~created hereby~~, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to ~~Section~~section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of ~~the~~any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 ~~Resignation~~Replacement of the Original Trustee

~~On or before •, 2017 or as soon thereafter as is practicable,~~

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall ~~receive the recommendations of the Advisory Committee contemplated by and for the purposes described in~~appoint the Persons contemplated by the Trustee Replacement Annex ~~(the "**Advisory Committee**") and, in accordance with the procedures set forth in~~to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex~~ and upon being satisfied that the persons recommended to become members of the Advisory Committee satisfy the criteria~~. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint~~ as additional Trustees [number] of individuals recommended~~, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [~~number] additional trustees~~six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee~~. [Insert bare bones governance for the Board's initial purposes.]~~ (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 ~~Appointment of Successor Trustee~~Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting

shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ~~[Add governance provisions to permit remaining trustees~~***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising ~~after Board of Trustees is first constituted under Section 5.7 and to prohibit last trustee from resigning until replacement appointed, subject to an~~following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.~~]~~

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred

in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this ~~Section [~~section 5.9~~]~~ shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had ~~been~~ originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section ~~5.10,~~5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of ~~Documents~~Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust.[3] Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

[3] ~~Consider extending this power to the Administrative Services Agent.~~

[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 ~~Amendment~~Amendments

~~The~~Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing ~~and in addition to the principles and procedures set forth in the Principles Annex and the Permitted Delegation Annex~~, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add ~~additional Trustees;~~provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) ~~(b)~~ include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures ~~for meetings~~governing the decision-making of the Board of Trustees;

(h) ~~(c)~~ add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) ~~(d)~~ provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

[6] NTD: Consider and, if retained, integrate with Board concepts.

(j) ~~(e)~~ specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries ~~who will be the recipients~~; or

(k) ~~(f)~~ specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to~~,~~ or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to ~~this Section 6.~~section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to ~~Section 7.3, [and Section~~section 7.2~~]~~, the Trust will continue in full force and effect so long as there ~~is~~are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[47]

~~**7.2 [Termination for Non-Performance**~~

~~**[NTD: Mechanism to address non-performance by Trustees?]**~~

7.2 ~~7.3~~ Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs ~~not later than [December 31, 2037~~as soon as practicable after the Final Distribution Date~~] (the "**Termination Date**"). Upon~~. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual ~~Beneficiary. [NTD: This section subject to ongoing review.]~~Beneficiaries, in each case in accordance with section 3.3.

7.3 ~~7.4~~ Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual ~~Beneficiary on such date.~~Beneficiaries in accordance with Section 3.3.

[47] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By:
Name:
Title:

By:
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles ~~apply~~in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 ~~A~~[Except in exceptional circumstances,] a Primary Beneficiary ~~should~~would not be expected to receive a ~~payment~~benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection ~~Criteria~~Factors**"):

~~(i) it is an [owner-occupied,] [non-commercial] electricity customer;~~

(i) ~~(ii)~~ it has ~~[committed] [made arrangements] [proposed] [indicated its willingness~~a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) ~~(iii)~~ its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) ~~(iv)~~ it confirms that :

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. ~~(v)~~ it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. ~~(vi) the Eligible Measures to be undertaken by it under its Energy Plan~~it would ~~not~~ otherwise not be ~~eligible for reimbursement from third parties, including under any efficiency or conservation program implemented by a governmental agency~~[a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) ~~(vii)~~ it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) ~~(viii) Such~~such other criteria as the Trustee may determine ~~after consultation with~~, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 ~~The availability of~~It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries ~~should be allocated on an equitable and consistent basis~~ across different areas and regions within ~~the Province, having regard to:~~Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need~~.~~; and

(iv) ~~1.3 An efficient basis upon which to allocate funds to the Beneficiaries across different areas and regions within the Province will be based on the designated areas and regions serviced by the Electricity Distributors operating within the Province.~~ such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 ~~The~~It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides ~~will~~would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether ~~a~~ the Primary Beneficiary satisfies the Selection ~~Criteria~~Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of ~~[Project]~~Program[8];

(iii) be able to ~~efficiently integrate and reflect any~~facilitate an efficient payment of distribution ~~payments~~ determined to be made to or on behalf of the Primary Beneficiary ~~within its~~, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

Primary Beneficiary satisfies the Selection ~~Criteria~~Factors, which information may not otherwise be available or readily accessible ~~by the Trustee.~~or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 ~~The designated~~It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its ~~designated~~ area or region. Such information ~~will~~is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the ~~Purposes of the Trust~~Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries ~~for~~in making distributions ~~under~~to the ~~[Project]~~Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection ~~Criteria~~Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in ~~the Province~~Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection ~~Criteria~~Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the ~~[Project]~~Program. If such limitations or restrictions would limit an Electricity ~~Distributors~~Distributor from providing or confirming the name of a particular Primary Beneficiary~~,~~ to the Trustee, then it should be sufficient that such

information may be obtained or disseminated on a confidential basis ~~and~~if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the ~~[Project] to the extent~~Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures ~~Criteria~~Factors**"):

(i) ~~[~~electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures ~~Criteria~~Factors, Electricity Distributors ~~will~~would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the

climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the ~~following~~ measures ~~will be considered Eligible Measures: See Schedule A~~ specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. ~~Other~~Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 ~~3.1~~ It is expected that administrative expenses of the ~~Trustee~~Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to ~~delivery of the program by~~the implementation and operation of the Program, including by or through Electricity Distributors~~, will be in accordance~~ and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][~~5~~9], ~~in~~ the current form of which attached as Schedule B to this Principles Annex ~~as Exhibit 1.~~ .

4.2 ~~3.2~~ The Trustee is expected to conduct its activities ~~to ensure that~~in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) ~~public funds are spent~~act prudently and in furtherance of the Purpose;

(ii) ~~the Trustee is accountable~~report annually the results of its activities for information purposes to the Province ~~for program activities~~in connection with the Program;

[~~5~~9] NTD: Ministry to confirm applicable Directive(s).

(iii) ~~it complies~~comply with the Province's request for any independent verification~~/audit~~ or audit if determined to be necessary or appropriate by the Province;

(iv) ~~the Province can recover the funds if they are not being used for the purposes intended.~~return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

4.3 ~~3.3 It is expected that~~ Electricity Distributors ~~will~~are not intended to directly profit from distributions ~~made from the Trust~~of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 ~~3.4 It is expected that distributions~~Distributions from the Trust ~~will~~are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 ~~3.5 It~~Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets ~~will~~would be distributed ~~between April 1, 2017 and March 31, 2019.~~to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

~~Basic~~Initial Specified **Measures**
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

~~Basic~~Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
~~12-14.4 cubic foot freezer~~
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
~~certification mark~~
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier ~~dehumidifier dehumidifier~~
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

~~**[NTD: Add details pertaining to heat pumps]**~~

Heat Pumps
(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more
Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**
Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

~~EXHIBIT 1~~SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under ~~Section~~section 4.2(~~d~~g) of the Declaration, the Trustee has the power to: [(~~A~~a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (~~B~~b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with ~~Section~~section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under ~~Section~~section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. ~~Without limitation, the Administrative Services Agreements may provide for the following:~~Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor ~~will~~would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to ~~[~~the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data~~]~~, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the ~~selection factors set forth under clause 1.1 ["Identification of Beneficiary Payees"] in the Principles Annex~~Selection Factors.

        ii. Each Electricity Distributor ~~will~~would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to ~~[considerations]~~the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of

the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor ~~will~~would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates ~~may~~would be utilized under the ~~[Project]~~Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation ~~will~~would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by ~~"[Insert]" under the Principles Annex, which will~~the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of ~~the Province of~~ Ontario ~~(the "**Province**")~~.

iv. The Trustee ~~will~~would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the ~~[Project]~~Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each ~~LDC~~Electricity Distributor, its "**Maximum ~~LDC~~Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum ~~LDC Amount~~Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee~~,~~ from time to time in its discretion.

v. Each Electricity Distributor ~~will~~would apply the principles set forth under ~~[~~"Identification of Primary Beneficiary Payees" in the Principles Annex~~]~~ to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its ~~designated~~ service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor ~~will~~would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum ~~LDC~~Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the ~~servicer~~service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum ~~Beneficiary Amount~~Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any

amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee ~~will~~would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. ~~2.~~ The identity of ~~each~~such Primary Beneficiary Payee ~~resident in the Electricity Distributor's service area or region and its residential address;~~; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. ~~3. The amount of the distribution to be paid to or for the benefit of each such Beneficiary Payee.~~If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in ~~a~~an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee ~~will~~would arrange for payment to or on the

direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to ~~a~~be made to a Primary Beneficiary Payee, the Electricity Distributor ~~will~~would arrange for payment of the full amount of such distribution to or for the benefit of the ~~Beneficiary Payee~~Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. ~~c.~~ **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor ~~will provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of the~~would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor ~~will~~would keep and maintain all financial records and non-financial documents and records relating to the provision of services under ~~the~~its Administrative Services Agreement. [~~Specify required~~NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. ~~iii.~~ The Trustee, its authorized representatives or an independent auditor ~~may~~would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its ~~process~~processes for ~~determining~~recommending the Primary Beneficiary Payees~~,~~ and their respective distribution amounts and regarding the delivery of Trust funds ~~to [or for the benefit of] the Beneficiary Payees. The Trustee, its authorized representatives or an independent auditor may inspect and copy all records and documents kept in accordance with the Administrative Services Agreement and conduct an audit or investigation of the Electricity Distributor in respect of the identification of the applicable Beneficiary Payees, the amount of distributions made to or for the benefit of the Beneficiary Payees; and the delivery of funds to or for the benefit of the Beneficiary Payees.~~on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. ~~d.~~ **Standard of Care**

i. The Electricity Distributor ~~will~~would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the

degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor ~~will~~would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. ~~e.~~ **Expenses**

~~i.~~ The Electricity Distributor ~~will~~would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements ~~will~~would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

~~[Other matters you may consider dealing with here include~~ *[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law~~/confidentiality/legal considerations and~~ requirements~~;~~/ money laundering~~; preparation of accounting and tax statements by the Trust; compliance with regulatory~~ laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;~~ appropriate reps and indemnities from LDCs; specific reporting of cash and allocations;~~(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of*

information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries~~; preparation of reports for the Government and cooperation with other compliance by the Trust with the TPA;~~ (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the ~~[Project];~~Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   •

   •

   •

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members ~~may~~of the Advisory Committee would appoint ~~a~~another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify ~~[number~~[six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees ~~of the Affordability Fund Trust~~ and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) ~~Demonstrate~~each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) ~~Have~~each member demonstrates an expertise in conservation and low income ~~electricity support~~ programs;~~\~~

   c) ~~Are geographically representative; and~~three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) ~~Include~~it is expected that representation ~~from a cross-section of electricity distributor sizes.~~ by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. ~~4.~~ The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become ~~replacement~~the initial members of the Board of Trustees ~~of the Affordability Fund Trust~~ pursuant to section 5.7 of the Declaration.

6. ~~5.~~ If any of the ~~persons~~individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section ~~[~~5.7~~]~~ of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a ~~Trustee~~member of the Board of Trustees would result in the ~~Trustees~~Trustee collectively satisfying the criteria in paragraph 2 above.

7. ~~6.~~ Upon the appointment of [~~number~~six] trustees (five voting and one non-voting) pursuant to section ~~.~~5.7 of the Declaration, the Advisory Committee will be functus.

Document comparison by Workshare Compare on Sunday, March 19, 2017 1:26:00 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/12887993/10
Description	TOR_2024-#12887993-v10-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Document 2 ID	PowerDocs://TOR_2024/12887993/15
Description	TOR_2024-#12887993-v15-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14,_2017)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	696
Deletions	441
Moved from	19
Moved to	19
Style change	0
Format changed	0

Total changes	1175

RE_ Treasury Board Secretariat - Confidentiality Agreement .rtf

From: Colley, Matthew (CA - Toronto) [mcolley@deloitte.ca]
To: Weakley, Donna (CA - Toronto) [dweakley@deloitte.ca]; Gary, Trevor (CA - Toronto) [tgary@deloitte.ca]; Grindley, Clair (CA - Toronto) [clgrindley@deloitte.ca]; Bazile, Max (CA - Toronto) [mbazile@deloitte.ca]; Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Treasury Board Secretariat - Confidentiality Agreement
Date: Wednesday, October 19, 2016 11:57:01

I have the confidentiality agreements for Trevor and Max as we signed those at the beginning of that engagement back in July. I don't think Clair and Kerry should sign those agreements for July 21st because the accounting opinion work didn't start then. I think the date of the confidentiality agreements for the accounting opinion work should be tied to the date of the engagement letter if people are comfortable back dating.

From: Weakley, Donna (CA - Toronto)
Sent: Wednesday, October 19, 2016 11:51 AM
To: Gary, Trevor (CA - Toronto) <tgary@deloitte.ca>; Colley, Matthew (CA - Toronto) <mcolley@deloitte.ca>; Grindley, Clair (CA - Toronto) <clgrindley@deloitte.ca>; Bazile, Max (CA - Toronto) <mbazile@deloitte.ca>; Danyluk, Kerry (CA - Toronto) <kdanyluk@deloitte.ca>
Cc: Virani, Shyrose (FIN) (Shyrose.Virani@ontario.ca) <Shyrose.Virani@ontario.ca>
Subject: Treasury Board Secretariat - Confidentiality Agreement

I received this request from Shyrose at the Treasury Board. She does not have your email addresses, so if you would see her request below and return directly to her it would be appreciated.

Thanks,

Donna

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, October 19, 2016 11:27 AM

To: Weakley, Donna (CA - Toronto) <dweakley@deloitte.ca>
Subject: Confidentiality Agreement

Hi Donna

As per our telephone conversation, attached, please find a confidentiality agreement. Please give to:

1. Trevor Gary
2. Matt Colley
3. Clair Grindley
4. Max Bazile
5. Kerry Danyluk

Project date was July 21, 2016 so if they can please back date it according to that date, that would be wonderful. Kindly return it back to me at your earliest.

Thanks

Shyrose

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Subject: RE: Treasury Board Secretariat - Confidentiality Agreement
Date: Wednesday, October 19, 2016 12:01:25

Hi Matt

Can you please send me the copies of confidentiality agreement for yourself, Trevor and Max. As for Clair and Kerry they can date it when they actually started to work (i.e. sometime in Sept?)

Thanks

Shyrose

From: Colley, Matthew (CA - Toronto) [mailto:mcolley@deloitte.ca]
Sent: October 19, 2016 11:57 AM
To: Weakley, Donna (CA - Toronto); Gary, Trevor (CA - Toronto); Grindley, Clair (CA - Toronto); Bazile, Max (CA - Toronto); Danyluk, Kerry (CA - Toronto)
Cc: Virani, Shyrose (TBS)
Subject: RE: Treasury Board Secretariat - Confidentiality Agreement

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Cc: Virani, Shyrose (FIN) (Shyrose.Virani@ontario.ca) <Shyrose.Virani@ontario.ca>
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To: Weakley, Donna (CA - Toronto) <dweakley@deloitte.ca>
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RE_ Triton Request A Quote Form - Company or Organization.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Triton Request A Quote Form - Company or Organization
Date: Tuesday, July 18, 2017 10:30:50
Attachment 1: image001.jpg
Attachment 2: image002.jpg

Ok, thank you,

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 18, 2017 10:30 AM
To: Virani, Shyrose (TBS)
Subject: FW: Triton Request A Quote Form - Company or Organization

It is being sent to my PA as I did not receive it. Very strange…

From: Picard, Michel
Sent: Tuesday, July 18, 2017 10:29 AM
To: 'Melynda Coffey' <melynda@tritonverify.com>
Cc: Manno, Christina C <cmanno@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

cmanno@kpmg.ca

From: Melynda Coffey [mailto:melynda@tritonverify.com]
Sent: Tuesday, July 18, 2017 10:15 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hi Michel,

Were would you like me to send it to?

Regards,

Melynda Coffey

Customer Service Agent

TRITON

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario.

M2J 5B5

Phone: 416-494-4444 Ext. 200

Toll Free: 1-844-874-8667

Fax: 866-284-3149

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 18, 2017 10:00 AM
To: Melynda Coffey <melynda@tritonverify.com>
Cc: Manno, Christina C <cmanno@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hi Melynda,

I received this email but the email with the link. It is not in my spam.

Can you send to my PA and she will forward it to me?

Michel

From: Melynda Coffey [mailto:melynda@tritonverify.com]
Sent: Tuesday, July 18, 2017 9:51 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton Request A Quote Form - Company or Organization

Hello Michel,

I just resent the link again to the email address below. mpicard@kpmg.ca

Regards,

Melynda Coffey

Customer Service Agent

TRITON

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario.

M2J 5B5

Phone: 416-494-4444 Ext. 200

Toll Free: 1-844-874-8667

Fax: 866-284-3149

From: Alysha Feasby [mailto:alysha@tritonverify.com]
Sent: July 18, 2017 9:31 AM
To: 'Melynda Coffey' <melynda@tritonverify.com>
Subject: FW: Triton Request A Quote Form - Company or Organization

Thank you,

Alysha Feasby

Account Manager

2235 Sheppard Ave East

Suite 1503

Toronto, Ontario

M2J 5B5

Phone: 416-494-4444 Ext. 201

Toll Free: 1-844-874-8667

Fax: 866-284-3149

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Le présent message peut contenir des renseignements confidentiels et ne s'adresse qu'au destinataire ou qu'à la destinataire dont le nom figure ci-dessus. Si vous n'êtes pas cette personne, nous attirons votre attention sur le fait qu'il est strictement interdit de copier, de faire suivre ou d'utiliser les informations contenues dans ce message. S'il vous est parvenu par mégarde, veuillez le supprimer et en aviser TRITON Canada Inc. aussitôt.

From: customerservice@tritoncanada.ca [mailto:customerservice@tritoncanada.ca]
Sent: July 17, 2017 4:23 PM
To: alysha@tritonverify.com
Subject: Triton Request A Quote Form - Company or Organization

Triton Request A Quote Form - Company or Organization

Name:

Michel Picard

Email:

mpicard@kpmg.ca

Phone:

4167778414

Industry:

# of Employees:

City:

Province:

Comments:

Hello, I am working with Virani Shyrose, and was told I would be receiving an email from you regarding a background check. I have received no email, and I have nothing in Spam/ Junk. Can you please let me know if a message was sent to mpicard@kpmg.ca? Thanks

Date time:

7/17/2017 4:22:50 PM

Client tag:

CONTACT US CANADA SITE

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image001.pdf

TRITON

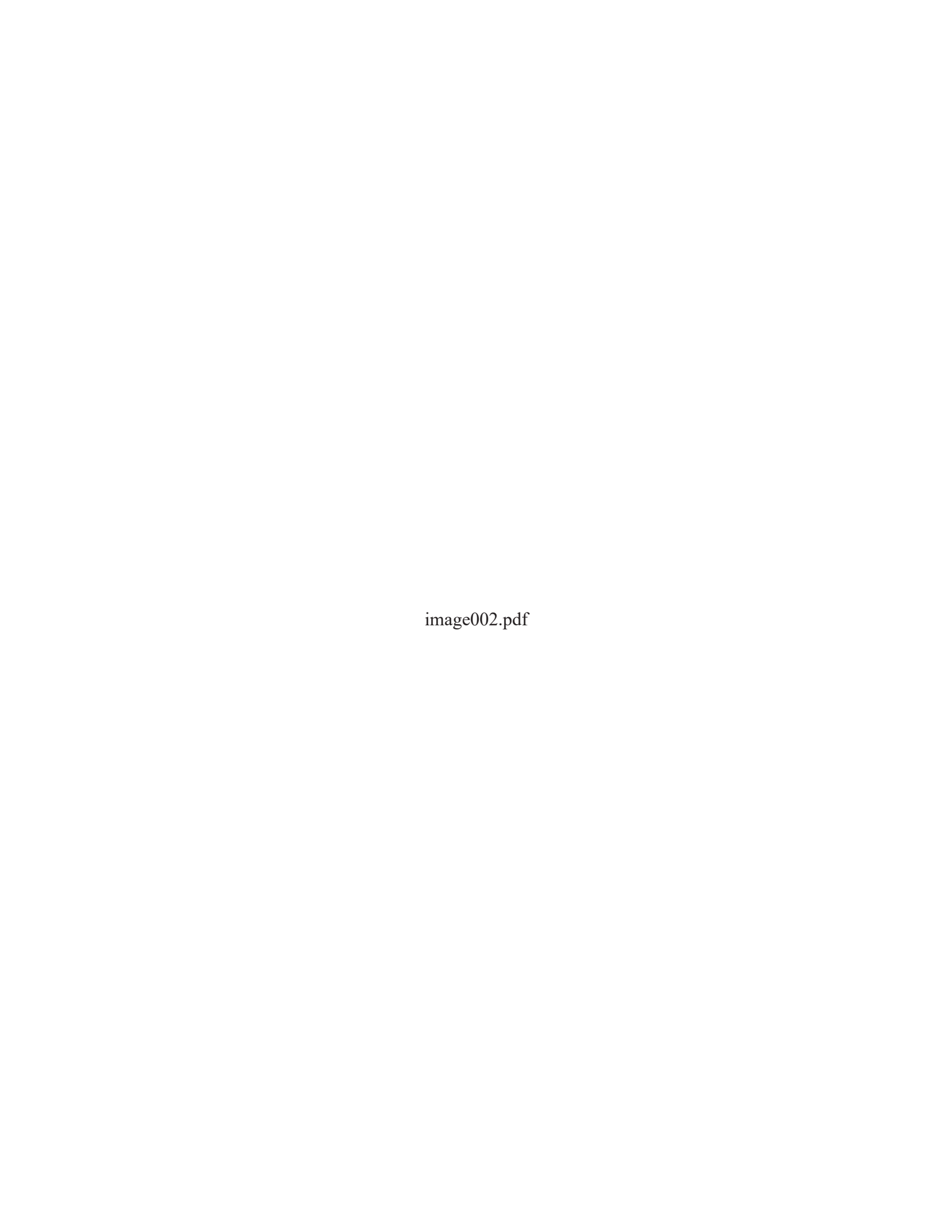
image002.pdf

RE_ Triton.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Triton
Date: Monday, July 17, 2017 15:46:40

I have just called them and they are not answering the phone. The message says that they are closing at 4:30pm but it is only 3:45pm!

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:37 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They sent to both of you.

Michel I would suggest that you call Triton because they have your correct email address and yet you are not receiving their link, please call Triton at

1-844-874-8667 and explain the situation to them.

Thanks

s1-844-874-8667844-874-8667

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:31 PM
To: Virani, Shyrose (TBS)
Cc: De Stefanis, Jeremy M
Subject: RE: Triton

Hi Shyrose,

Is it sent to me or Jeremy or both? I am sorry to say that I did not receive anything myself.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:24 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: RE: Triton

Ok, they just sent you again, can you please check and let me know

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:07 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Not there either. Maybe they will be sending it soon.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]

Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Triton.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: De Stefanis, Jeremy M [jmdestefanis@kpmg.ca]
Subject: RE: Triton
Date: Monday, July 17, 2017 15:31:20

Hi Shyrose,

Is it sent to me or Jeremy or both? I am sorry to say that I did not receive anything myself.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:24 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: RE: Triton

Ok, they just sent you again, can you please check and let me know

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:07 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Not there either. Maybe they will be sending it soon.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:01 PM

To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Triton.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Triton
Date: Monday, July 17, 2017 15:06:32

Not there either. Maybe they will be sending it soon.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Triton.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Triton
Date: Monday, July 17, 2017 15:00:20

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Triton.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Triton
Date: Tuesday, July 18, 2017 10:25:19

Hi, any luck?

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:47 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

I have just called them and they are not answering the phone. The message says that they are closing at 4:30pm but it is only 3:45pm!

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:37 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They sent to both of you.

Michel I would suggest that you call Triton because they have your correct email address and yet you are not receiving their link, please call Triton at

1-844-874-8667 and explain the situation to them.

Thanks

s1-844-874-8667844-874-8667

From: Picard, Michel [mailto:mpicard@kpmg.ca]

Sent: July 17, 2017 3:31 PM
To: Virani, Shyrose (TBS)
Cc: De Stefanis, Jeremy M
Subject: RE: Triton

Hi Shyrose,

Is it sent to me or Jeremy or both? I am sorry to say that I did not receive anything myself.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:24 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: RE: Triton

Ok, they just sent you again, can you please check and let me know

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:07 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Not there either. Maybe they will be sending it soon.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]

Sent: Monday, July 17, 2017 3:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Triton.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Triton
Date: Monday, July 17, 2017 15:36:50

They sent to both of you.

Michel I would suggest that you call Triton because they have your correct email address and yet you are not receiving their link, please call Triton at

1-844-874-8667 and explain the situation to them.

Thanks

s1-844-874-8667844-874-8667

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:31 PM
To: Virani, Shyrose (TBS)
Cc: De Stefanis, Jeremy M
Subject: RE: Triton

Hi Shyrose,

Is it sent to me or Jeremy or both? I am sorry to say that I did not receive anything myself.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:24 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: RE: Triton

Ok, they just sent you again, can you please check and let me know

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:07 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Not there either. Maybe they will be sending it soon.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Triton.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
CC: jmdestefanis@kpmg.ca [jmdestefanis@kpmg.ca]
Subject: RE: Triton
Date: Monday, July 17, 2017 15:24:07

Ok, they just sent you again, can you please check and let me know

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:07 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Not there either. Maybe they will be sending it soon.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Triton.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: Triton
Date: Monday, July 17, 2017 15:01:03

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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Re_ Triton.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: Triton
Date: Monday, July 17, 2017 16:09:57

Pls leave them a msg and they will return your call

From: Picard, Michel
Sent: Monday, July 17, 2017 3:46 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

I have just called them and they are not answering the phone. The message says that they are closing at 4:30pm but it is only 3:45pm!

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:37 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They sent to both of you.

Michel I would suggest that you call Triton because they have your correct email address and yet you are not receiving their link, please call Triton at

1-844-874-8667 and explain the situation to them.

Thanks

s1-844-874-8667844-874-8667

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:31 PM
To: Virani, Shyrose (TBS)
Cc: De Stefanis, Jeremy M

Subject: RE: Triton

Hi Shyrose,

Is it sent to me or Jeremy or both? I am sorry to say that I did not receive anything myself.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:24 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: RE: Triton

Ok, they just sent you again, can you please check and let me know

Thanks

shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:07 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Not there either. Maybe they will be sending it soon.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 3:01 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Triton

They just sent to you few minutes ago, please check your junk folder

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July 17, 2017 3:00 PM
To: Virani, Shyrose (TBS)
Subject: RE: Triton

Hi Shyrose,

When was it sent as I do not have one.

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, July 17, 2017 2:59 PM
To: Picard, Michel <mpicard@kpmg.ca>; De Stefanis, Jeremy M <jmdestefanis@kpmg.ca>
Subject: Triton

Hi

Triton has sent you a link, can you please complete it today.

Thanks

shyrose

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RE_ Update Affordability Fund.rtf

From: Petsche, Nadine (TBS) []
To: Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]
CC: Sermat-Harding, Kaili (ENERGY) [Kaili.Sermat-Harding@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; An, Tai (ENERGY) [Tai.An@ontario.ca]; Gounden, Pratima (ENERGY) [Pratima.Gounden@ontario.ca]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'PRESTAGE, JA' [JA.PRESTAGE@blakes.com]
Subject: RE: Update Affordability Fund
Date: Tuesday, March 21, 2017 18:44:11

Hi Usman.

This should not be an issue. It would be good to know the proposed wording. I assume that the wording will reflect H1 as the interim admin service provider, to be confirmed by the Trustee (preferrably prior to March 31). Nadine

From: Syed, Usman (ENERGY)
Sent: March-21-17 6:31 PM
To: Petsche, Nadine (TBS)
Cc: Sermat-Harding, Kaili (ENERGY); Schwab-Pflug, Emma (ENERGY); Qureshi, Musab (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); An, Tai (ENERGY); Gounden, Pratima (ENERGY); 'ASHBOURNE, STEPHEN'; 'PRESTAGE, JA'
Subject: FW: Update Affordability Fund

Hi Nadine – Hydro One is proposing some further changes to the TPA and Declaration. Specifically, they would like to have Hydro One explicitly named in the documents as the administrative service provider. KPMG thinks there is no control issue (see email chain below), but wanted to get your opinion, thanks…

- Usman

From: Alexandra.Phillips@HydroOne.com [mailto:Alexandra.Phillips@HydroOne.com]
Sent: March 21, 2017 5:50 PM
To: Syed, Usman (ENERGY); Schwab-Pflug, Emma (ENERGY)
Subject: FW: Update Affordability Fund

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Monday, March 20, 2017 1:14 PM
To: CHHELAVDA Samir; PHILLIPS Alexandra; PMilligan@osler.com
Subject: RE: Update Affordability Fund

Agree with Samir, not an accounting issue if provide back office only.

From: Samir.Chhelavda@HydroOne.com [mailto:Samir.Chhelavda@HydroOne.com]
Sent: Monday, March 20, 2017 12:12 PM
To: Alexandra.Phillips@HydroOne.com; PMilligan@osler.com
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Update Affordability Fund

Alex – I do not see an issue on this as we are only providing administrative support. I have copied Michel Picard from KPMG to get his thoughts as well.

Samir

From: PHILLIPS Alexandra
Sent: Monday, March 20, 2017 11:27 AM
To: CHHELAVDA Samir; PMilligan@osler.com
Subject: RE: Update Affordability Fund

Hi Samir: Is there any control issues with naming Hydro One as the service provider in the docs?

Best,

Alex Phillips

Manager, External Relations

Hydro One Networks Inc.

483 Bay St, Toronto, ON

(O) 416-345-1375

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RE_ Updated Control Assessment (for your review and feedback).rtf

From: Petsche, Nadine (TBS) []
To: VINER, JON [JON.VINER@blakes.com]
CC: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: RE: Updated Control Assessment (for your review and feedback)
Date: Tuesday, March 21, 2017 12:17:41
Attachment 1: image001.gif

Thanks so much for your feedback Jon (and Stephen). I will revise the document later today.

I think that some of the language in the docs may still need to be further refined to limite the risk that the province is seen as having a veto right. Please see the extract below from the PSAB standards which will help to clarify my concern. Copying Emma so that she is aware of the status of this work and this suggestion.

Thanks again.

Nadine

14 There are a variety of ways to govern the financial and operating policies of an organization. For example:

(a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;

(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or

(c) a government may veto, overrule or modify the financial and operating policies established by an organization.

From: VINER, JON [mailto:JON.VINER@blakes.com]
Sent: March 21, 2017 11:33 AM
To: Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: RE: Updated Control Assessment (for your review and feedback)

Nadine,

Please find attached comments on Appendix 1.

I note that, given the time constraints, some of the comments may be more detailed than what you are interested in looking for/revising at this point.

Please let us know if you'd like to discuss.

Best,

Jon

Jon Viner

Associate

jon.viner@blakes.com

Dir: 416-863-2499

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** March 20, 2017 at 10:32:54 PM EDT
> **To:** "stephen.ashbourne@blakes.com" <stephen.ashbourne@blakes.com>, "Picard, Michel (mpicard@kpmg.ca)" <mpicard@kpmg.ca>
> **Cc:** "samir chhelavda (Samir.Chhelavda@HydroOne.com)" <Samir.Chhelavda@HydroOne.com>
> **Subject: Updated Control Assessment (for your review and feedback)**
>
> Stephen/Michel,
>
> Attached is an updated DRAFT control analysis reflecting current information based on the updated draft TPA and Declaration (5:30 pm version) attached.
>
> Your review of the analysis in Appendix 1 would be valuable as follows:
>
> *Stephen* – please advise of any factual inaccuracies in the extracts listed
>
> *Michel* – please advise of any additional elements that should be reflected,

comments inserted and conclusions for each of the control criteria w.r.t. control (yes or no).

MOE is expecting the updated control analysis as soon as possible. Your feedback by tomorrow at noon would be most appreciated, if possible.

Thanks in advance.

Nadine

image001.pdf

Blakes

RE_ Updated Control Assessment (for your review and feedback).rtf

From: Petsche, Nadine (TBS) []
To: VINER, JON [JON.VINER@blakes.com]
CC: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
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Date: Tuesday, March 21, 2017 12:17:41
Attachment 1: image001.gif

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Thanks again.

Nadine

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(c) a government may veto, overrule or modify the financial and operating policies established by an organization.

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Sent: March 21, 2017 11:33 AM
To: Petsche, Nadine (TBS)
Cc: ASHBOURNE, STEPHEN
Subject: RE: Updated Control Assessment (for your review and feedback)

Nadine,

Please find attached comments on Appendix 1.

I note that, given the time constraints, some of the comments may be more detailed than what you are interested in looking for/revising at this point.

Please let us know if you'd like to discuss.

Best,

Jon

Jon Viner

Associate

jon.viner@blakes.com

Dir: 416-863-2499

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> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** March 20, 2017 at 10:32:54 PM EDT
> **To:** "stephen.ashbourne@blakes.com" <stephen.ashbourne@blakes.com>, "Picard, Michel (mpicard@kpmg.ca)" <mpicard@kpmg.ca>
> **Cc:** "samir chhelavda (Samir.Chhelavda@HydroOne.com)" <Samir.Chhelavda@HydroOne.com>
> **Subject: Updated Control Assessment (for your review and feedback)**
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>
> *Michel* – please advise of any additional elements that should be reflected,

comments inserted and conclusions for each of the control criteria w.r.t. control (yes or no).

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Thanks in advance.

Nadine

image001.pdf

Blakes

RE_ Updated Control Assessment (for your review and feedback).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Updated Control Assessment (for your review and feedback)
Date: Tuesday, March 21, 2017 12:26:15

Do you have the track changes of the two documents amended by Blakes?

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Monday, March 20, 2017 10:33 PM
To: stephen.ashbourne@blakes.com; Picard, Michel <mpicard@kpmg.ca>
Cc: samir chhelavda (Samir.Chhelavda@HydroOne.com) <Samir.Chhelavda@HydroOne.com>
Subject: Updated Control Assessment (for your review and feedback)

Stephen/Michel,

Attached is an updated DRAFT control analysis reflecting current information based on the updated draft TPA and Declaration (5:30 pm version) attached.

Your review of the analysis in Appendix 1 would be valuable as follows:

Stephen – please advise of any factual inaccuracies in the extracts listed

Michel – please advise of any additional elements that should be reflected, comments inserted and conclusions for each of the control criteria w.r.t. control (yes or no).

MOE is expecting the updated control analysis as soon as possible. Your feedback by tomorrow at noon would be most appreciated, if possible.

Thanks in advance.

Nadine

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RE_ Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: PRESTAGE, JA (JA.PRESTAGE@blakes.com) [JA.PRESTAGE@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: RE: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:42:02
Attachment 1: Control Assessment_Affordability Fund Rev Mar 22 am np.doc

---

Good morning all.

Please use the attached version of the control analysis instead. Thanks. Nadine

From: Petsche, Nadine (TBS)
Sent: March 21, 2017 11:08 PM
To: stephen.ashbourne@blakes.com; VINER, JON (JON.VINER@blakes.com); Picard, Michel (mpicard@kpmg.ca)
Cc: PRESTAGE, JA (JA.PRESTAGE@blakes.com); Schwab-Pflug, Emma (ENERGY); samir chhelavda (Samir.Chhelavda@HydroOne.com)
Subject: Updated Control Assessment (Mar 21)

Stephen/Jon/Michel,

Please find attached an updated version of the control analysis for your reference.

Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.

Thanks.

Nadine

Control Assessment_Affordability Fund Rev Mar 22 am np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

REVISED Control Assessment of Affordability Fund Trust (Rev. Mar 21, 2017 11 pm) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of additional edits to docs.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills.

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

Commented [NP1]: H1 precluded?

DRAFT

In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and **give regard to** guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

DRAFT

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Draft Trust Declaration (March 20 5:30 pm), including related schedules
2. Draft Transfer Payment Agreement (March 20 5:30 pm)
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control.

DRAFT

APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
DRAFT

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	The Trust Declaration and TPA are not intended to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. This intention is clearly communicated in the TPA:	

Commented [NP2]: Blakes and MOE to consider additional edits to specified text in the agreements (to ensure consistency with messaging regarding potential changes to docs and discretion of the Trustees).

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose. Under the TPA, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2 which • the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. (see 20.2) • The TPA states in section 20.2 that The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed. **Changes to Trust Declaration:** Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration with an expectation that such changes should not [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] Section 6.1(e) permits the Trustee to add to or reasonably clarify MODIFY the principles set forth in the Principles Annex. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles.	✓

Commented [NP3]: Blakes to consider further edits (suggests principles are not discretationary and non-compulsory)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Section 2.3 of the Principles Annex of the Trust Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)". Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). The TPA does not direct a specific governance structure, but rather includes the following reference under 2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0 Section 5.8 of the Trust Declaration provides further discusses expectations w.r.t. rules and procedures of the Board of Trustees which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. . There will be no assets at the end of the Trust's existence to return back to the Province, and the termination of the Trust will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to terminate unilateral. **SECTION 7 – TERMINATION (Declaration of Trust)** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT (TPA)** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.2Extension.** The term of the Agreement may be extended by further agreement between the Parties. **3.3Extension of the Declaration of Trust.** Where the parties agree upon an extension under 3.2, the Trustee pursuant to the Declaration of Trust, is expected to undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members (appointment of original trustee is accompanied by ;a process for identification of replacement board which will perform active trustee duties.) No intention or ability to control original trustee)	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS offers the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the	Initial Trustee ✓ Replace-ment Board X

Commented [NP4]: Suggested these alternative edits to BLAKES otherwise reflects controlling language

Commented [NP5]: But no control – see PSAS guidance quoted

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	organization	
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Computershare, as settlor and Computershare as trustee established the trust. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 ***(c) Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(d)Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitality directive only state expectation that Trust's processes would align with the principles.)	***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** See commentary on control criteria #3 above for lack of control of Province. ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or	X

Commented [npp6]: Detailed/specific 'guidance' in Principles Annex andPermitted Delegation Annex, as well as process for establishing Replacement Board. Assessment focus is control at March 31/17

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs (non-controlled by the province). Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. However, it should be noted that these sections are descriptions of matters that would typically be expected an Administrative Services Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement). **5.0RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **PRINCIPLES ANNEX** The Trustee shall have regard to [but shall not be specifically bound by,] the principles listed in applying its discretion in relation to the administration of the Trust. 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s:t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

DRAFT

RE_ Updated Control Assessment (Mar 21).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:05:32

I thought 7 was a yes.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, March 21, 2017 11:08 PM
To: stephen.ashbourne@blakes.com; VINER, JON (JON.VINER@blakes.com) <JON.VINER@blakes.com>; Picard, Michel <mpicard@kpmg.ca>
Cc: PRESTAGE, JA (JA.PRESTAGE@blakes.com) <JA.PRESTAGE@blakes.com>; Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>; samir chhelavda (Samir.Chhelavda@HydroOne.com) <Samir.Chhelavda@HydroOne.com>
Subject: Updated Control Assessment (Mar 21)

Stephen/Jon/Michel,

Please find attached an updated version of the control analysis for your reference.

Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.

Thanks.

Nadine

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- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: PRESTAGE, JA (JA.PRESTAGE@blakes.com) [JA.PRESTAGE@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: RE: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:42:02
Attachment 1: Control Assessment_Affordability Fund Rev Mar 22 am np.doc

---

Good morning all.

Please use the attached version of the control analysis instead. Thanks. Nadine

From: Petsche, Nadine (TBS)
Sent: March 21, 2017 11:08 PM
To: stephen.ashbourne@blakes.com; VINER, JON (JON.VINER@blakes.com); Picard, Michel (mpicard@kpmg.ca)
Cc: PRESTAGE, JA (JA.PRESTAGE@blakes.com); Schwab-Pflug, Emma (ENERGY); samir chhelavda (Samir.Chhelavda@HydroOne.com)
Subject: Updated Control Assessment (Mar 21)

Stephen/Jon/Michel,

Please find attached an updated version of the control analysis for your reference.

Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.

Thanks.

Nadine

Control Assessment_Affordability Fund Rev Mar 22 am np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

REVISED Control Assessment of Affordability Fund Trust (Rev. Mar 21, 2017 11 pm) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of additional edits to docs.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills.

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

Commented [NP1]: H1 precluded?

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In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and **give regard to** guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

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There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Draft Trust Declaration (March 20 5:30 pm), including related schedules
2. Draft Transfer Payment Agreement (March 20 5:30 pm)
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	The Trust Declaration and TPA are not intended to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. This intention is clearly communicated in the TPA:	

Commented [NP2]: Blakes and MOE to consider additional edits to specified text in the agreements (to ensure consistency with messaging regarding potential changes to docs and discretion of the Trustees).

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose. Under the TPA, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2 which • the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. (see 20.2) • The TPA states in section 20.2 that The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed. **Changes to Trust Declaration:** Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration with an expectation that such changes should not [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] Section 6.1(e) permits the Trustee to add to or reasonably clarify MODIFY the principles set forth in the Principles Annex. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles.	✓

Commented [NP3]: Blakes to consider further edits (suggests principles are not discretationary and non-compulsory)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Section 2.3 of the Principles Annex of the Trust Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)". Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). The TPA does not direct a specific governance structure, but rather includes the following reference under 2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0 Section 5.8 of the Trust Declaration provides further discusses expectations w.r.t. rules and procedures of the Board of Trustees which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. . There will be no assets at the end of the Trust's existence to return back to the Province, and the termination of the Trust will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to terminate unilateral. **SECTION 7 – TERMINATION (Declaration of Trust)** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT (TPA)** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.2Extension.** The term of the Agreement may be extended by further agreement between the Parties. **3.3Extension of the Declaration of Trust.** Where the parties agree upon an extension under 3.2, the Trustee pursuant to the Declaration of Trust, is expected to undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members (appointment of original trustee is accompanied by ;a process for identification of replacement board which will perform active trustee duties.) No intention or ability to control original trustee)	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS offers the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the	Initial Trustee ✓ Replace-ment Board X

Commented [NP4]: Suggested these alternative edits to BLAKES otherwise reflects controlling language

Commented [NP5]: But no control – see PSAS guidance quoted

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	organization	
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Computershare, as settlor and Computershare as trustee established the trust. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 ***(c) Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(d)Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitality directive only state expectation that Trust's processes would align with the principles.)	***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** See commentary on control criteria #3 above for lack of control of Province. ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or	X

Commented [npp6]: Detailed/specific 'guidance' in Principles Annex andPermitted Delegation Annex, as well as process for establishing Replacement Board. Assessment focus is control at March 31/17

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs (non-controlled by the province). Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. However, it should be noted that these sections are descriptions of matters that would typically be expected an Administrative Services Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement). **5.0RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **PRINCIPLES ANNEX** The Trustee shall have regard to [but shall not be specifically bound by,] the principles listed in applying its discretion in relation to the administration of the Trust. 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s:t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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RE_ Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: PRESTAGE, JA (JA.PRESTAGE@blakes.com) [JA.PRESTAGE@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: RE: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:42:02
Attachment 1: Control Assessment_Affordability Fund Rev Mar 22 am np.doc

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Good morning all.

Please use the attached version of the control analysis instead. Thanks. Nadine

From: Petsche, Nadine (TBS)
Sent: March 21, 2017 11:08 PM
To: stephen.ashbourne@blakes.com; VINER, JON (JON.VINER@blakes.com); Picard, Michel (mpicard@kpmg.ca)
Cc: PRESTAGE, JA (JA.PRESTAGE@blakes.com); Schwab-Pflug, Emma (ENERGY); samir chhelavda (Samir.Chhelavda@HydroOne.com)
Subject: Updated Control Assessment (Mar 21)

Stephen/Jon/Michel,

Please find attached an updated version of the control analysis for your reference.

Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.

Thanks.

Nadine

Control Assessment_Affordability Fund Rev Mar 22 am np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

REVISED Control Assessment of Affordability Fund Trust (Rev. Mar 21, 2017 11 pm) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of additional edits to docs.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills.

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

Commented [NP1]: H1 precluded?

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In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and **give regard to** guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

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There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Draft Trust Declaration (March 20 5:30 pm), including related schedules
2. Draft Transfer Payment Agreement (March 20 5:30 pm)
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	The Trust Declaration and TPA are not intended to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. This intention is clearly communicated in the TPA:	

Commented [NP2]: Blakes and MOE to consider additional edits to specified text in the agreements (to ensure consistency with messaging regarding potential changes to docs and discretion of the Trustees).

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose. Under the TPA, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2 which • the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. (see 20.2) • The TPA states in section 20.2 that The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed. **Changes to Trust Declaration:** Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration with an expectation that such changes should not [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] Section 6.1(e) permits the Trustee to add to or reasonably clarify MODIFY the principles set forth in the Principles Annex. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles.	✓

Commented [NP3]: Blakes to consider further edits (suggests principles are not discretationary and non-compulsory)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Section 2.3 of the Principles Annex of the Trust Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)". Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). The TPA does not direct a specific governance structure, but rather includes the following reference under 2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0 Section 5.8 of the Trust Declaration provides further discusses expectations w.r.t. rules and procedures of the Board of Trustees which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. . There will be no assets at the end of the Trust's existence to return back to the Province, and the termination of the Trust will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to terminate unilateral. **SECTION 7 – TERMINATION (Declaration of Trust)** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT (TPA)** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.2Extension.** The term of the Agreement may be extended by further agreement between the Parties. **3.3Extension of the Declaration of Trust.** Where the parties agree upon an extension under 3.2, the Trustee pursuant to the Declaration of Trust, is expected to undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members (appointment of original trustee is accompanied by ;a process for identification of replacement board which will perform active trustee duties.) No intention or ability to control original trustee)	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS offers the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the	Initial Trustee ✓ Replace-ment Board X

Commented [NP4]: Suggested these alternative edits to BLAKES otherwise reflects controlling language

Commented [NP5]: But no control – see PSAS guidance quoted

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	organization	
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Computershare, as settlor and Computershare as trustee established the trust. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 ***(c) Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(d)Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitality directive only state expectation that Trust's processes would align with the principles.)	***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** See commentary on control criteria #3 above for lack of control of Province. ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or	X

Commented [npp6]: Detailed/specific 'guidance' in Principles Annex andPermitted Delegation Annex, as well as process for establishing Replacement Board. Assessment focus is control at March 31/17

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs (non-controlled by the province). Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. However, it should be noted that these sections are descriptions of matters that would typically be expected an Administrative Services Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement). **5.0RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **PRINCIPLES ANNEX** The Trustee shall have regard to [but shall not be specifically bound by,] the principles listed in applying its discretion in relation to the administration of the Trust. 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s:t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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RE_ Updated Control Assessment (Mar 21).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:31:13

It is an issue that cannot be resolved and should not be a factor that will swing the control to the province!

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 8:30 AM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: Re: Updated Control Assessment (Mar 21)

Sorry, if you mean I have indicated it is not an issue and it may be, I will review asap. Almost at the office. N

From: Petsche, Nadine (TBS)
Sent: Wednesday, March 22, 2017 8:22 AM
To: Picard, Michel
Subject: Re: Updated Control Assessment (Mar 21)

Thx. Will review again following the call, once we're more certain on planned wording changes. Don't want to leave the impression we're in safe waters. N

From: Picard, Michel
Sent: Wednesday, March 22, 2017 8:05 AM
To: Petsche, Nadine (TBS)
Subject: RE: Updated Control Assessment (Mar 21)

I thought 7 was a yes.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, March 21, 2017 11:08 PM
To: stephen.ashbourne@blakes.com; VINER, JON (JON.VINER@blakes.com) <JON.VINER@blakes.com>; Picard, Michel <mpicard@kpmg.ca>
Cc: PRESTAGE, JA (JA.PRESTAGE@blakes.com) <JA.PRESTAGE@blakes.com>; Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>; samir chhelavda (Samir.Chhelavda@HydroOne.com) <Samir.Chhelavda@HydroOne.com>
Subject: Updated Control Assessment (Mar 21)

Stephen/Jon/Michel,
Please find attached an updated version of the control analysis for your reference.
Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.
Thanks.
Nadine

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* Disclaimer concerning tax advice<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html> (http://taxdisclaimer.kpmg.ca<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html>).

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RE_ Updated Control Assessment (Mar 21).rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:05:32

I thought 7 was a yes.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, March 21, 2017 11:08 PM
To: stephen.ashbourne@blakes.com; VINER, JON (JON.VINER@blakes.com) <JON.VINER@blakes.com>; Picard, Michel <mpicard@kpmg.ca>
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Re_ Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:22:02

Thx. Will review again following the call, once we're more certain on planned wording changes. Don't want to leave the impression we're in safe waters. N

From: Picard, Michel
Sent: Wednesday, March 22, 2017 8:05 AM
To: Petsche, Nadine (TBS)
Subject: RE: Updated Control Assessment (Mar 21)

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, March 21, 2017 11:08 PM
To: stephen.ashbourne@blakes.com; VINER, JON (JON.VINER@blakes.com) <JON.VINER@blakes.com>; Picard, Michel <mpicard@kpmg.ca>
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Re_ Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: Updated Control Assessment (Mar 21)
Date: Wednesday, March 22, 2017 08:29:45

Sorry, if you mean I have indicated it is not an issue and it may be, I will review asap. Almost at the office. N

From: Petsche, Nadine (TBS)
Sent: Wednesday, March 22, 2017 8:22 AM
To: Picard, Michel
Subject: Re: Updated Control Assessment (Mar 21)

Thx. Will review again following the call, once we're more certain on planned wording changes. Don't want to leave the impression we're in safe waters. N

From: Picard, Michel
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Cc: PRESTAGE, JA (JA.PRESTAGE@blakes.com) <JA.PRESTAGE@blakes.com>; Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>; samir chhelavda (Samir.Chhelavda@HydroOne.com) <Samir.Chhelavda@HydroOne.com>
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RE_ Updated P&G - March 10th.rtf

From: Petsche, Nadine (TBS) []
To: Tam, Nelson (TBS) [Nelson.Tam@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RE: Updated P&G - March 10th
Date: Tuesday, March 14, 2017 21:36:25

Hi Nelson.

Do you have any edits from your review of the document?

Please feel free to share it with EY (Suzie Gignac (suzie.r.gignac@ca.ey.com); LeeAnne.Probert@ca.ey.com) and have a call with them this week to walk them through the policy and any outstanding issues.

I would like to be cc'd on the calendar invite, but I won't likely be able to attend.

Nadine

From: Tam, Nelson (TBS)
Sent: March-10-17 4:47 PM
To: Petsche, Nadine (TBS)
Subject: FW: Updated P&G - March 10th

Nadine

Not sure if Ibrahim sent to you. Just in case. I will look at it this weekend and discuss with him on Monday.

Thanks

Nelson

X20514

From: Saboor, Ibrahim (TBS)
Sent: March-10-17 4:30 PM
To: Tam, Nelson (TBS)
Subject: Updated P&G - March 10th

Hi Nelson,

Please find attached the most up to date version of the P&G draft. I've either highlighted, or commented in, the sections which have to be worked on. Please review, thanks!!

RE_ URGENT - for your consideration.rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
CC: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: RE: URGENT - for your consideration
Date: Tuesday, March 21, 2017 20:14:11

Hi Stephen.

Forgot to include 6.1 (e) for your consideration (added below).n

From: Petsche, Nadine (TBS)
Sent: March-21-17 7:58 PM
To: stephen.ashbourne@blakes.com
Cc: Schwab-Pflug, Emma (ENERGY)
Subject: URGENT - for your consideration
Importance: High

Stephen,

Just going through the control analysis and I seem to be having a number of version control issues to deal with. In the meantime, I thought it would be best if I sent you a couple of impt items for consideration on the assumption that you might be further revising the docs. As noted in my earlier email, there remains a real risk that some of the current wording would reflect a 'veto' right by the gov't which would be akin to control. I am copying Emma on this note in case you need to seek Ministry concurrence on any of the edits. Nadine

Consider stating "Any Trustee initiated changes to the Trust Declaration would ARE EXPECTED TO BE consistent with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably MODIFY the principles set forth in the Principles

Trust Declaration:

Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided

that ~~no~~ amendments are expected to be consistent with ~~shall conflict with~~ the principles set forth in the Principles Annex and to take into consideration the suggested scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.]

Section 6.1(e) permits the Trustee to add to or reasonably ~~clarify~~ MODIFY the principles set forth in the Principles Annex.

3.2Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. ~~If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient,~~ Where the parties agree under 3.2, to an extension of the date, it is expected that ~~so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will~~ the Trust undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient is requested to advise the Province through the quarterly report back process on the status of any activities involving the above suggested activities.

RE_ Urgent (FAO attendees from KPMG).rtf

From: Petsche, Nadine (TBS) []
To: Schuurman, Tim (MOF) [Tim.Schuurman@ontario.ca]
Subject: RE: Urgent (FAO attendees from KPMG)
Date: Wednesday, May 17, 2017 14:27:30

Thanks Tim. Sorry for any confusion regarding roles. As Cindy notes, it is important that the FAO realize that KPMG is IESO's external advisor, and that neither KPMG nor IESO has received a copy of the report. Hoping that the meeting goes well and that the participants are able to provide additional context/background on the relevance of RRA to the IESO's operations and financial reporting.

N

From: Schuurman, Tim (MOF)
Sent: May 17, 2017 2:25 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Esmail, Selena (MOF)
Cc: Hosick, Sarah (TBS)
Subject: Re: Urgent (FAO attendees from KPMG)

Ok. I'll let Jeff know.

From: Veinot, Cindy (TBS)

Sent: Wednesday, May 17, 2017 2:24 PM

To: Schuurman, Tim (MOF); Petsche, Nadine (TBS); Esmail, Selena (MOF)

Cc: Hosick, Sarah (TBS)

Subject: RE: Urgent (FAO attendees from KPMG)

We have not shared the report with anyone. Its IESO's accounting issue, so I think they should be there. Michel is also engaged by IESO.

From: Schuurman, Tim (MOF)
Sent: May 17, 2017 2:23 PM

To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Esmail, Selena (MOF)
Cc: Hosick, Sarah (TBS)
Subject: Re: Urgent (FAO attendees from KPMG)

Thanks. Didn't know we were inviting IESO. I didn't let the FAO know that. They don't have the report, do they?

From: Veinot, Cindy (TBS)

Sent: Wednesday, May 17, 2017 2:12 PM

To: Petsche, Nadine (TBS); Schuurman, Tim (MOF); Esmail, Selena (MOF)

Cc: Hosick, Sarah (TBS)

Subject: RE: Urgent (FAO attendees from KPMG)

Shannon has taken care of this – thanks,

From: Petsche, Nadine (TBS)
Sent: May 17, 2017 2:12 PM
To: Schuurman, Tim (MOF); Esmail, Selena (MOF)
Cc: Veinot, Cindy (TBS); Hosick, Sarah (TBS)
Subject: FW: Urgent (FAO attendees from KPMG)
Importance: High

Please add name noted to the attendee listing for the FAO meeting. Also, in case you haven't been advised, I believe that Susan Nicholson from the IESO is also planning to attend. Thanks. Nadine

From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:48 PM
To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: FW: Urgent

Hi Cindy,

Assuming I have a signed indemnity letter, I would like to bring a senior manager to take notes during the meeting. Can you please arrange for his name to be on the list at your reception desk - David Brownridge?

Regards,

Michel

From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:43 PM
To: 'Kim Marshall' <Kim.Marshall@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; John Rattray <John.Rattray@ieso.ca>
Subject: Urgent

All,

I have been instructed by our National Risk Management partner that in the absence of a signed indemnity letter, I will not be able to attend the meeting with the FAO.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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RE_ Urgent (FAO attendees from KPMG).rtf

From: Petsche, Nadine (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: Urgent (FAO attendees from KPMG)
Date: Wednesday, May 17, 2017 14:12:55

---

thx

From: Veinot, Cindy (TBS)
Sent: May 17, 2017 2:12 PM
To: Petsche, Nadine (TBS); Schuurman, Tim (MOF); Esmail, Selena (MOF)
Cc: Hosick, Sarah (TBS)
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From: Petsche, Nadine (TBS)
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Cc: Veinot, Cindy (TBS); Hosick, Sarah (TBS)
Subject: FW: Urgent (FAO attendees from KPMG)
Importance: High

Please add name noted to the attendee listing for the FAO meeting. Also, in case you haven't been advised, I believe that Susan Nicholson from the IESO is also planning to attend. Thanks. Nadine

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To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
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Hi Cindy,

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Regards,

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From: Picard, Michel
Sent: Wednesday, May 17, 2017 1:43 PM
To: 'Kim Marshall' <Kim.Marshall@ieso.ca>; Michael Boll <Michael.Boll@ieso.ca>; John Rattray <John.Rattray@ieso.ca>
Subject: Urgent

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RE_ year end.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Church, Bailey J [bchurch@kpmg.ca]
Subject: RE: year end
Date: Monday, March 12, 2018 09:01:01

Hi Shyrose.

We will send you an invoice in the coming days.

Thanks for reminding us!

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

LinkedIn

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Monday, March 12, 2018 9:00 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Church, Bailey J <bchurch@kpmg.ca>
Subject: RE: year end

Hi Michel

Hope you are back from your holidays and had a great time, I still have not heard from Bailey. Can you please let me know since March is our fiscal year end and we would appreciate receiving invoices for any outstanding months.

Thanks

Shyrose

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 23, 2018 3:11 PM
To: Virani, Shyrose (TBS)
Cc: Church, Bailey J
Subject: Re: year end

Thanks Shyrose. Just landed in Florida (it is 28 degrees!). I will communicate with Bailey and revert back to you early next week.

Have a great weekend!

Sent from my iPhone

On Feb 23, 2018, at 15:06, Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca> wrote:

Hi Michel:

We are approaching towards our year-end and we have to provide our forecast. Could you please let me know if there are any forthcoming invoices that I will be receiving from you for February and March?

Thanks
Shyrose

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RE_ year end.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
CC: Church, Bailey J [bchurch@kpmg.ca]
Subject: RE: year end
Date: Monday, March 12, 2018 08:59:43

Hi Michel

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RE_ year end.rtf

From: Virani, Shyrose (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: RE: year end
Date: Friday, February 23, 2018 16:13:03

Great, thanks

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 23, 2018 3:11 PM
To: Virani, Shyrose (TBS)
Cc: Church, Bailey J
Subject: Re: year end

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RE_ year end.rtf

From: Virani, Shyrose (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: RE: year end
Date: Tuesday, April 03, 2018 09:05:02
Attachment 1: image001.gif

Thanks Suzie for letting me know, is it possible to email the copy of the invoice today please

Thanks

shyrose

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April 2, 2018 12:22 PM
To: Virani, Shyrose (TBS)
Cc: Jeannie Kaminski
Subject: RE: year end

Hi Shyrose:
We are preparing an invoice for March as of end of last week. It is related primarily to transfer payment work we did for Ian Provis in the last two weeks and will be for approx. $7,500.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: March-12-18 9:02 AM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: year end

Hi Suzie:

As March is our fiscal year end, we would appreciate receiving invoice for the month of March if any. Please let me know.

Thanks

Shyrose

p.s. I did receive invoice for February.

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image001.pdf

Re_ year end.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Church, Bailey J [bchurch@kpmg.ca]
Subject: Re: year end
Date: Friday, February 23, 2018 16:10:47

Thanks Shyrose. Just landed in Florida (it is 28 degrees!). I will communicate with Bailey and revert back to you early next week.

Have a great weekend!

Sent from my iPhone

On Feb 23, 2018, at 15:06, Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca> wrote:

> Hi Michel:
>
> We are approaching towards our year-end and we have to provide our forecast. Could you please let me know if there are any forthcoming invoices that I will be receiving from you for February and March?
>
> Thanks
> Shyrose

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Re_ Your thoughts please (before 9_30).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: Re: Your thoughts please (before 9:30)
Date: Monday, March 20, 2017 06:51:19

Another thought...even if the trust was consider controlled until the time that the conditions were met which would allow it to flow funds, wouldn't the liability and expense still be recognized based on the detailed public commitment that had been made to the LDCS and their customers? Even if the cash would still be reported on our books, so would the liability and expense? N

From: Petsche, Nadine (TBS)
Sent: Monday, March 20, 2017 6:41 AM
To: Picard, Michel
Cc: Qureshi, Musab (ENERGY); samir chhelavda; Syed, Usman (ENERGY); Sermat-Harding, Kaili (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Subject: Your thoughts please (before 9:30)

Michel,
As noted in my preliminary analysis. There is a risk that the Trust could be considered controlled as at March 31 and the expense note reported in 16/17 due primarily ro the restriction on trustee actions on paying money to beneficiaries until certain administrative details are addressed and the replacement Board of Trustees put in place.

Under PSAB standards, there wouldn't be a requirement to have a signed TPA in place or to flow the funds in order to achieve expense recognition. These actions have been pursued in order to try to try to ensure expense recognition, even though flowing the funds earlier cold raise some additional comunications risks.

Reflecting again on PSAB's requirements for expense recognition for government transfers (that government has made a commitment with little or no discretion to avoid, which can be reasonably estimated and which is uthorized), I might suggest an alternative path to the MOE, taking the more recent correspondence bwtween OPCD amd the OAG on One-Time transfers:

- That a valid Trust be established before Mar 31 (still need to address some remaining "control' perception risks in the Declaration (need your input)
-That the government, based on details developed to date on AFT, make a sufficiently detailed announcement of the government's commitment to flow the funds to the established trust (based on the 100 only), once administrative details have been worked out, but prior to June (which is the date that we have been generally using with the OAG_
- by June, one could reasonably assume that the requirements that would otherwise have been imposed on the Trust before flowing funds might have been accomplished

(MOE to confirm)
- this would also give more time to put the AC and Trustees in place without unnecessarily rushing the schedule which appears to be becoming unnecessarily challenging as we attempt to address all of the control related aspects of the docs.

Your thoughts please (preferably prior to the 9:30 call).
Thanks!
N

RE_ .pdf

From: Petsche, Nadine (TBS)
To: Kim Marshall
Subject: RE:
Date: July 14, 2017 10:17:00 AM

Extract from the AG's audit planning report (as part of the 2016-17 Public Accounts audit). N

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: July 14, 2017 9:29 AM
To: Petsche, Nadine (TBS)
Subject: RE:

Where did this come from?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca <http://www.ieso.ca> | Twitter: IESO_Tweets <http://www.twitter.com/ieso_tweets> | LinkedIn: IESO <https://www.linkedin.com/company/ieso>

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May 25, 2017 3:18 PM
To: Kim Marshall; Picard, Michel (mpicard@kpmg.ca)
Subject:

Materiality

Our objective in planning and performing our audit is to detect misstatements that are, individually or in the

aggregate, material to the consolidated financial statements taken as a whole. We assess materiality on the basis of what is likely to change or influence the decisions of persons relying on the financial statements. Departures from the Canadian acceptable framework for public sector accounting could constitute a qualitative reason for a qualified audit opinion.

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RE_ Discussion Items for IESO Call.pdf

From: Petsche, Nadine (TBS)
To: Kim Marshall; Picard, Michel
Subject: RE: Discussion Items for IESO Call
Date: June 15, 2017 9:06:00 AM

Thanks Kim.
Hoping to keep the conversation at a higher level and take advantage of Michel's expertise on RRA for the call. Thanks for the offer of further follow up with Susan. N

-----Original Message-----
From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: June 15, 2017 8:46 AM
To: Petsche, Nadine (TBS); Picard, Michel
Subject: RE: Discussion Items for IESO Call

Nadine, some of these questions may be better answered by susan Nicholson who is not available at 10. If we do not handle this morning suan can do another time.

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: June 15, 2017 8:01 AM
To: Picard, Michel; Kim Marshall
Subject: Fw: Discussion Items for IESO Call

Good morning.
We had suggested that EY list some of their questions in advance of today's call (see below). I personally think however, that we first need to establish a common understanding of RRA (eg. Clarity of accounting guidance wrt governing board, independence, different types of RRAs), and perhaps address some of EY's questions/confusion following their read of the AG's recent comments/postings and how they might relate (or not) to the IESO's situation.
Just forwarding these Q's as an info item. Talk soon, N

From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Thursday, June 15, 2017 2:42 AM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS); Suzie Gignac; Blake Langill
Subject: Discussion Items for IESO Call

Hi Nadine,

Below is a list of the items I would like to discuss on our call with the IESO.

Please let me know if you have any questions/concerns with the list.

Regards,
Lee Anne

IESO Financial Statements

Current supply cost variance account

- Where is this recorded on the 2016 balance sheet (Amounts due to/from market participants?)
- Why is this not a regulatory asset? Is it considered to be a financial asset?
- There are similarities between this variance account and the new FHP variance account, but FHP variance account is going to be accounted for a regulatory asset. What is driving different treatment?

Market accounts

- Can we walk through the entries that are booked as part of the settlement process (timing and DRs/CRs)
- What are 'Other liabilities' (Note 3)

Market Administration/Settlement

Confirm/correct the following:

Price consumers pay comprised of:

- Electricity price:
  - Electricity commodity price (HOEP)
  - Transmission price
  - Distribution price
- Global Adjustment

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment

Supply of electricity comes from:

1. OPG (rate set by OEB)
2. Non-utility generators (rate set by contract – contracts held by OEFC)
3. Generation facilities under contract with IESO (rate set by contract)
4. Imports (paid HOEP)

Are there are other suppliers that are paid HOEP?

Portion of Global Adjustment determined by IESO driven by variances relating to #1, #2, #3 above

What is the nature of the contracts IESO enters into?
Participation agreements

- IESO enters into participation agreements with all market participants (buyers and sellers)
- Participation agreements bind IESO and counterparty to follow market rules
- Participation agreement would be the only contract IESO enters into with #1, #2, #4 above

Supply contracts

- Since IESO does not buy and sell electricity, what is the contract for? (IESO paying for commitment that the counterparty will supply electricity into the IESO grid?)
- Does the IESO negotiate the terms of these contracts?

Buyers of electricity from IESO grid are comprised of:

- LDCs
- Large consumers

The electricity commodity price paid by all buyers is HOEP.
IESO determines HOEP.
Although IESO determines HOEP, IESO is not really determining rates charged to buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost.

[cid:image001.gif@01D2E57B.8F206A10]

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP
EY Tower, 100 Adelaide Street West, P.O. Box 1, Toronto, Ontario M5H 0B3, Canada
Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
Fax: 416 943 3767 | EY/Comm: 1657762

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RE_ Discussion on IESO_OPG accounting impacts.pdf

From: Kim Marshall
To: JORDA Jenny -FIN & C CTRL; Michael Boll; Susan Nicholson; WONG Leslie -LAWDIV; MAUTI John -FIN & C CTRL; VISWANATHAN Suneethi -FIN & C CTRL; "Picard, Michel"; GO Matthew -TREASURY; PRESTON Stuart -TREASURY; Veinot, Cindy (TBS); Calwell, Carolyn (ENERGY/MEDEI/MRI); Anthony Martinello
Subject: RE: Discussion on IESO/OPG accounting impacts
Date: July 6, 2017 1:58:36 PM

Just an update. KPMG is preparing documented responses to items 1-3, should be available beginning of next week. What is the timing and process for revisiting this? I am on vacation most of next week but Susan can act on behalf of IESO and I can join a conf call if needed. Thanks.

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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From: JORDA Jenny -FIN & C CTRL [mailto:jenny.jorda@opg.com]
Sent: June 28, 2017 5:58 PM
To: Michael Boll; Kim Marshall; Anthony Martinello; Susan Nicholson; 'Tracy Brennan'; Laney Doyle; 'Brittany Keenan'; WONG Leslie -LAWDIV; MAUTI John -FIN & C CTRL; 'phamilton@stikeman.com'; 'gzacher@stikeman.com'; VISWANATHAN Suneethi -FIN & C CTRL; 'Picard, Michel'; GO Matthew -TREASURY; PRESTON Stuart -TREASURY; 'Veinot, Cindy (TBS)'; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Kelly, Gale M; JACKSON, ADAM; Christie, Tim (ENERGY)
Subject: RE: Discussion on IESO/OPG accounting impacts

Hi All – see below for action items from today's meeting. Please let me know if I missed anything.

Item	Action Item	Responsibility
	Assumptions: Four year moratorium exists where ratepayers will not pay interest during the first 4 years IESO will be contractually obligated to pay the Trust interest expense/fees/other during the first 4 years	
1	IESO to complete consolidation analysis of Trust including determining whether the IESO being required to backstop any non purchases of deferrals by the Trust (i.e. failure to roll paper) would impact consolidation	IESO/KPMG
2	IESO to determine whether current wording in the Regulations allows for the recording of an asset to **fully** offset the financial liability (which will consist of the present value of 4 years of interest)	IESO/KPMG
3	IESO to confirm whether full amount of regulatory asset can be de-recognized upon sale to the Trust considering there are still obligations ongoing to pay Trust interest/fees, etc.	IESO/KPMG
4	OPG to assess impacts of not being able to record interest revenue to offset interest expense	OPG/EY
	Determine whether there are possibilities of having the ratepayers pay the 'interest' component through a possible redefinition of 'clean energy	Province

5	adjustment' or include as part of 'global adjustment' or liaise with Bill Presentment Committee on alternatives	Counsel

-----Original Appointment-----
From: JORDA Jenny -FIN & C CTRL
Sent: Wednesday, June 21, 2017 4:04 PM
To: JORDA Jenny -FIN & C CTRL; 'Michael Boll'; 'Kim Marshall'; 'Anthony Martinello'; 'Susan Nicholson'; 'Tracy Brennan'; Laney Doyle; 'Brittany Keenan'; WONG Leslie -LAWDIV; MAUTI John -FIN & C CTRL; 'phamilton@stikeman.com'; 'gzacher@stikeman.com'; VISWANATHAN Suneethi -FIN & C CTRL; 'Picard, Michel'; GO Matthew -TREASURY; PRESTON Stuart -TREASURY; 'Veinot, Cindy (TBS)'; Calwell, Carolyn (ENERGY/MEDEI/MRI)
Cc: Kelly, Gale M; JACKSON, ADAM; Christie, Tim (ENERGY)
Subject: Discussion on IESO/OPG accounting impacts
When: Wednesday, June 28, 2017 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: EY Tower - 100 Adelaide Street West - Meet 31st floor reception/Dial-in details: 1-866-259-5440 PIN: 76683014#

EY Tower - 100 Adelaide Street West - Meet 31st floor reception/Dial-in details: 1-866-259-5440 PIN: 76683014#

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RE_ Draft of IESO f_s.pdf

From: Susan Nicholson
To: Veinot, Cindy (TBS); Kim Marshall
Cc: Susan Nicholson
Subject: RE: Draft of IESO f/s
Date: March 14, 2018 2:09:02 PM
Attachments: IESO 2017 Audited Financial Statements.pdf

Hi Cindy – please find attached our 2017 audited financial statements. Please let me know if there is anything else you require.

Thanks, Susan

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: March 14, 2018 1:49 PM
To: Kim Marshall; Susan Nicholson
Subject: Draft of IESO f/s

Hi Kim and Susan – can you send me a draft of your 2017 f/s – I want to mirror some of the language re: rate regulated accounting in our statements and pre-election report. If you could flip me a copy today, that would be great.

Thanks,

Cindy

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IESO 2017 Audited Financial Statements.pdf

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

FINANCIAL STATEMENTS

DECEMBER 31, 2017

KPMG LLP
115 King Street South
2nd Floor
Waterloo ON N2J 5A3
Canada
Tel 519-747-8800
Fax 519-747-8830

INDEPENDENT AUDITORS' REPORT

To the Board of Directors of the Independent Electricity System Operator (IESO)

We have audited the accompanying financial statements of IESO, which comprise the statement of financial position as at December 31, 2017, the statements of operations and accumulated surplus, remeasurement gains and losses, change in net debt and cash flows for the year then ended, and notes, comprising a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian public sector accounting standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of IESO as at December 31, 2017, and its results of operations and the changes in its net debt and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

KPMG LLP

Chartered Professional Accountants, Licensed Public Accountants

Waterloo, Canada
March 8, 2018

Independent Electricity System Operator
Statement of Financial Position

As at (in thousands of Canadian dollars)	December 31, 2017	December 31, 2016
	$	$
FINANCIAL ASSETS		
Cash	64,214	38,914
Accounts receivable	41,429	25,194
Regulated assets (Note 3)	39,529	65,064
Long-term investments (Note 4)	45,276	40,355
Market accounts - assets (Note 5)	2,005,167	1,692,752
TOTAL FINANCIAL ASSETS	**2,195,615**	**1,862,279**
LIABILITIES		
Accounts payable and accrued liabilities (Note 6)	37,264	38,963
Accrued interest on debt	-	315
Rebates due to market participants (Note 7)	1,422	12,551
Debt (Note 8)	120,000	90,000
Accrued pension liability (Note 9)	29,229	34,620
Accrued liability for employee future benefits other than pension (Note 9)	96,216	90,251
Market accounts - liabilities (Note 5)	2,005,167	1,692,752
TOTAL LIABILITIES	**2,289,298**	**1,959,452**
NET DEBT	**(93,683)**	**(97,173)**
NON-FINANCIAL ASSETS		
Net tangible capital assets (Note 10)	100,794	105,047
Prepaid expenses	6,809	6,614
TOTAL NON-FINANCIAL ASSETS	**107,603**	**111,661**
ACCUMULATED SURPLUS		
Accumulated surplus from operations	3,436	6,582
Accumulated remeasurement gains	10,484	7,906
ACCUMULATED SURPLUS (Note 7)	**13,920**	**14,488**

Contingencies (Note 16)

See accompanying notes to financial statements

On behalf of the Board:

Tim O'Neill
Chair
Toronto, Canada

Carole Workman
Director
Toronto, Canada

Independent Electricity System Operator
Statement of Operations and Accumulated Surplus

For the year ended December 31 (in thousands of Canadian dollars)	2017 Budget	2017 Actual	2016 Actual
IESO CORE OPERATIONS	**$**	**$**	**$**
System fees	190,790	180,102	185,531
Other revenue (Note 11)	574	4,145	2,531
Interest and investment income	2,100	2,312	2,157
Core operation revenues	**193,464**	**186,559**	**190,219**
Core operation expenses (Note 12)	(193,464)	(185,137)	(177,668)
Core operations surplus/(deficit) before rebates	**-**	**1,422**	**12,551**
Rebates due to market participants	-	(5,422)	(12,551)
Core operations (deficit)	**-**	**(4,000)**	**-**
OTHER GOVERNMENT PROGRAMS			
Government transfer (Note 12)	-	2,696	-
Government transfer expenses (Note 12)	-	(2,696)	-
Government transfer surplus	**-**	**-**	**-**
SMART METERING ENTITY			
Smart metering charge	31,536	25,655	27,426
Smart metering expenses (Note 12)	(31,536)	(24,716)	(27,426)
Smart metering entity surplus	**-**	**939**	**-**
MARKET SANCTIONS AND PAYMENT ADJUSTMENTS			
Market sanctions and payment adjustments	4,219	3,176	3,889
Customer education and market enforcement expenses (Note 12)	(4,513)	(3,261)	(3,655)
Market sanctions and payment adjustments surplus/(deficit)	**(294)**	**(85)**	**234**
(DEFICIT)/SURPLUS	**(294)**	**(3,146)**	**234**
ACCUMULATED SURPLUS FROM OPERATIONS, BEGINNING OF PERIOD	6,582	6,582	6,348
ACCUMULATED SURPLUS FROM OPERATIONS, END OF PERIOD	**6,288**	**3,436**	**6,582**

See accompanying notes to financial statements

Independent Electricity System Operator
Statement of Remeasurement Gains and Losses

For the year ended December 31 (in thousands of Canadian dollars)	2017 Actual	2016 Actual
	$	$
ACCUMULATED REMEASUREMENT GAINS, BEGINNING OF PERIOD	**7,906**	**7,658**
UNREALIZED GAINS ATTRIBUTABLE TO:		
Foreign exchange - other	456	477
Portfolio investments (Note 4)	2,599	286
AMOUNTS RECLASSIFIED TO THE STATEMENT OF OPERATIONS:		
Foreign exchange - other	(477)	(515)
NET REMEASUREMENT GAINS FOR THE PERIOD	**2,578**	**248**
ACCUMULATED REMEASUREMENT GAINS, END OF PERIOD	**10,484**	**7,906**

See accompanying notes to financial statements

Independent Electricity System Operator
Statement of Change in Net Debt

For the year ended December 31 (in thousands of Canadian dollars)	2017 Budget	2017 Actual	2016 Actual
	$	$	$
SURPLUS/(DEFICIT)	**(294)**	**(3,146)**	**234**
CHANGE IN NON-FINANCIAL ASSETS			
Acquisition of tangible capital assets	(27,500)	(16,774)	(24,769)
Amortization of tangible capital assets	23,126	21,027	23,438
Change in prepaid expenses	-	(195)	(417)
TOTAL CHANGE IN NON-FINANCIAL ASSETS	**(4,374)**	**4,058**	**(1,748)**
NET REMEASUREMENT GAINS FOR THE PERIOD	-	2,578	248
CHANGE IN NET DEBT	**(4,668)**	**3,490**	**(1,266)**
NET DEBT, BEGINNING OF PERIOD	(97,173)	(97,173)	(95,907)
NET DEBT, END OF PERIOD	**(101,841)**	**(93,683)**	**(97,173)**

See accompanying notes to financial statements

Independent Electricity System Operator
Statement of Cash Flows

For the year ended December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
OPERATING TRANSACTIONS		
Change in accumulated surplus/(deficit)		
(Deficit)/Surplus	(3,146)	234
	(3,146)	234
Changes in non-cash items:		
Amortization	21,027	23,438
Pension expense	8,111	11,610
Other employee future benefits expense	8,601	8,127
	37,739	43,175
Changes in non-cash balances related to operations:		
Change in accounts payable and accrued liabilities	(202)	(7,495)
Change in accounts receivable	(16,235)	8,005
Change in rebates due to market participants	(11,129)	2,956
Change in regulated assets	25,535	23,138
Change in prepaid expenses	(195)	(417)
	(2,226)	26,187
Other:		
Contributions to pension fund	(13,502)	(13,052)
Payment of employee future benefits	(2,636)	(2,377)
	(16,138)	(15,429)
Cash provided by operating transactions	**16,229**	**54,167**
CAPITAL TRANSACTIONS		
Acquisition of tangible capital assets	(16,774)	(24,769)
Change in accounts payable and accrued liabilities	(1,812)	(2,410)
Cash applied to capital transactions	**(18,586)**	**(27,179)**
INVESTING TRANSACTIONS		
Purchase of long-term investments	(2,322)	(2,751)
Cash applied to investing transactions	**(2,322)**	**(2,751)**
FINANCING TRANSACTIONS		
Issuance of debt	30,000	-
Cash provided by financing transactions	**30,000**	**-**
INCREASE IN CASH	**25,321**	**24,237**
CASH - BEGINNING OF PERIOD	38,914	14,715
Unrealized foreign exchange (losses) for the period	(21)	(38)
CASH - END OF PERIOD	**64,214**	**38,914**

See accompanying notes to financial statements

Notes to Financial Statements

1. NATURE OF OPERATIONS

a) The Independent Electricity System Operator (IESO) is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. The predecessor IESO and the Ontario Power Authority (OPA) were amalgamated by statute effective January 1, 2015, and continues as the Independent Electricity System Operator. As set out in the *Electricity Act, 1998*, the IESO operates pursuant to a licence granted by the Ontario Energy Board (OEB). The amalgamation was effected pursuant to Bill 14, *Building Opportunity and Securing Our Future Act (Budget Measures), 2014*, which received Royal Assent on July 24, 2014. IESO's services and the market IESO operates are subject to regulation by the OEB, under the authority granted by the *Ontario Energy Board Act, 1998*. The OEB has regulatory oversight of electricity matters in Ontario. The objects of the IESO as contained in the *Electricity Act, 1998,* and Ontario Regulation 288/14 are as follows:

- to exercise the powers and perform the duties assigned to it under this Act, the regulations, directions, the market rules and its licence
- to enter into agreements with transmitters to give it authority to direct the operation of their transmission systems
- to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act
- to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system
- to establish and enforce criteria and standards relating to the reliability of the integrated power system
- to work with the responsible authorities outside of Ontario to co-ordinate the IESO's activities with the activities of those authorities
- to operate the IESO-administered markets (IAM) to promote the purposes of this Act
- to engage in activities related to contracting for the procurement of electricity supply, electricity capacity and conservation resources
- to engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under this Act or the *Ontario Energy Board Act, 1998*
- to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario
- to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term
- to conduct independent planning for electricity generation, demand management, conservation and transmission
- to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources
- to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources
- to engage in activities that facilitate load management
- to engage in activities that promote electricity conservation and the efficient use of electricity
- to assist the Board by facilitating stability in rates for certain types of consumers
- to collect and make public information relating to the short-term, medium-term and long-term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs
- to engage in such other objects as may be prescribed by the regulations.

b) The IESO was designated the Smart Metering Entity (SME) by Ontario Regulation 393/07 under the *Electricity Act, 1998,* on March 28, 2007. The regulation came into effect on July 26, 2007.

The objects of the SME, as contained in the *Electricity Act, 1998,* are as follows:

- to plan and implement and, on an ongoing basis, oversee, administer and deliver any part of the smart metering initiative as required by regulation under this or any Act or directive made pursuant to sections 28.3 or 28.4 of the *Ontario Energy Board Act, 1998*, and, if so authorized, to have the exclusive authority to conduct these activities
- to collect and manage and to facilitate the collection and management of information and data and to store the information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from distributors and, if so authorized, to have the exclusive authority to collect, manage and store the data
- to establish, to own or lease and to operate one or more databases to facilitate collecting, managing, storing and retrieving smart metering data
- to provide and promote non-discriminatory access, on appropriate terms and subject to any conditions in its licence relating to the protection of privacy, by distributors, retailers and other persons,

    i. to the information and data referred to above, and

    ii. to the telecommunication system that permits the SME to transfer data about the consumption or use of electricity to and from its databases, including access to its telecommunication equipment, systems and technology and associated equipment, systems and technologies.

- to own or to lease and to operate equipment, systems and technology, including telecommunication equipment, systems and technology that permit the SME to transfer data about the consumption or use of electricity to and from its databases, including owning, leasing or operating such equipment, systems and technology and associated equipment, systems and technologies, directly or indirectly, including through one or more subsidiaries, if the SME is a corporation
- to engage in such competitive procurement activities as are necessary to fulfill its objects or business activities
- to procure, as and when necessary, meters, metering equipment, systems and technology and any associated equipment, systems and technologies on behalf of distributors, as an agent or otherwise, directly or indirectly, including through one or more subsidiaries, if the SME is a corporation
- to recover, through just and reasonable rates, the costs and an appropriate return approved by the OEB associated with the conduct of its activities
- to undertake any other objects that are prescribed by associated regulation.

c) IESO is required to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* (FHP) and to engage in activities to facilitate the implementation of FHP, including,

    i. entering into agreements or arrangements with any person for the purposes of the FHP
    ii. engaging in activities related to making payments to and receiving payments as contemplated under the FHP and related settlement activities
    iii. engaging in activities related to the transfer and administration of the regulatory asset created under the FHP, which activities may include:
        a) incurring liabilities in relation to the regulatory asset
        b) transferring the regulatory asset under section 26 of the FHP for consideration
        c) acting as a recovery agent under the FHP.

d) The IESO is required to submit its proposed expenditures, revenue requirements and fees for the coming year to the OEB for review and approval. The submission may be made only with the approval or deemed approval of the IESO business plan by the Minister of Energy (Minister).

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a) Basis of financial statement preparation

The accompanying financial statements have been prepared on a going-concern basis and in accordance with Canadian public sector accounting standards (PSAB) and reflect the following significant accounting policies.

b) Revenue recognition

System fees earned by the IESO are based on approved rates for each megawatt of electricity withdrawn from the IESO-controlled grid (including scheduled exports) and embedded generation. System fees are recognized as revenue at the time the electricity is withdrawn. Rebates are recognized in the year in which the regulatory deferral account, before such rebates, exceeds regulated limits.

The Smart Metering Charge that is earned by the IESO is based on a rate approved by the OEB for each installed smart meter in the province. Revenue is recognized in the year as it is earned.

These financial statements reflect the revenue and expenses of the financial transactions of market participants within the IAM on a net basis.

Other revenue represents amounts that accrue to the IESO relating to investment income on funds passing through market settlement accounts, as well as application fees. Such revenue is recognized as it is earned.

Interest and investment income represents realized interest income and investment gains or losses on cash, cash equivalents, short-term investments and long-term investments.

Government transfers are recognized as revenues in the financial statements in the period in which the events giving rise to the transfer occur, providing the transfers are authorized, any eligibility criteria have been met and reasonable estimates of the amounts can be made.

Market sanctions represent funds received to offset payments disbursed related to penalties, damages, fines and payment adjustments arising from resolved settlement disputes. Such revenue is recognized as it is earned.

c) Financial instruments

The IESO records cash and cash equivalents, long-term investments and foreign currency exchange forward contracts at fair value. The cumulative change in fair value of these financial instruments is recorded in accumulated surplus as remeasurement gains and losses and is included in the value of the respective financial instrument shown in the statement of financial position and the statement of remeasurement gains and losses. Upon disposition of the financial instruments, the cumulative remeasurement gains and losses are reclassified to the statement of operations, and all other gains and losses associated with the disposition of the financial instrument are recorded in the statement of operations. Transaction costs are charged to operations as incurred.

Cash and cash equivalents comprise cash, term deposits and other short-term, highly rated investments with original maturity dates of less than 90 days.

The IESO records accounts receivable amounts due to and from market participants, accounts payable and debt at amortized cost.

d) Regulated assets and liabilities

As a rate-regulated entity, the IESO, in appropriate circumstances, establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues

because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980*, Regulated Operations,* in this policy.

e) Market accounts – assets and liabilities

The IESO records the market accounts, assets, liabilities and amounts due to and from market participants held on behalf of the IAM in its statements of financial position. The IESO-administered markets are a balancing system and, as such, the net position of market accounts will settle to a $nil balance in accordance with market rules.

f) Tangible capital assets

Tangible capital assets are recorded at cost, which includes all amounts directly attributable to the acquisition, construction, development or betterment of the asset. The IESO capitalizes applicable interest as part of the cost of tangible capital assets.

g) Assets under construction

Assets under construction generally relates to the costs of physical facilities, hardware and software, and includes costs paid to vendors, internal and external labour, consultants and interest related to funds borrowed to finance the project. Costs relating to assets under construction are transferred to tangible capital assets when the asset under construction is deemed to be ready for use.

h) Amortization

The capital cost of tangible capital assets in service is amortized on a straight-line basis over their estimated service lives.

The estimated service lives, in years, from the date the assets were acquired are:

Class	Estimated Average Service Life 2017	Estimated Average Service Life 2016
Facilities	5 to 50	5 to 50
Market systems and applications	4 to 12	4 to 12
Infrastructure and other assets	4 to 10	4 to 10
Meter data management/repository	10	10

Gains and losses on sales or premature retirements of tangible capital assets are charged to operations.

The estimated service lives of tangible capital assets are subject to periodic review. The effects of changes in the estimated lives are amortized on a prospective basis. The most recent review was completed in fiscal 2017.

i) Pension, other post-employment benefits and compensated absences

The IESO's post-employment benefit programs include pension, group life insurance, health care, long-term disability and workers' compensation benefits.

The IESO accrues obligations under pension and other post-employment benefit (OPEB) plans and the related costs, net of plan assets. Pension and OPEB expenses and obligations are determined annually by independent actuaries using the projected benefit method and management's best estimate of expected return on plan assets, salary escalation, retirement ages of employees, mortality and expected health-care costs. The discount rate used to value liabilities is based on the expected rate of return on plan assets as at the measurement date of September 30.

The expected return on plan assets is based on management's long-term best estimate using a market-related value of plan assets. The market-related value of plan assets is determined using the average value of assets over three years as at the measurement date of September 30.

Pension and OPEB expenses are recorded during the year in which employees render services. Pension and OPEB expenses consist of current service costs, interest expense on liabilities, expected return on plan assets and the cost of plan amendments in the period. Actuarial gains/(losses) arise from, among other things, the difference between the actual rate of return on plan assets for a period and the expected long-term rate of return on plan assets for that period or from changes in actuarial assumptions used to determine the accrued benefit obligations.

Actuarial gains/(losses) are amortized over the expected average remaining service life of the employees covered by the plan. The expected average remaining service life of employees covered by the pension plans is 15 years (2016 – 15 years) and OPEB plan is 16.2 years (2016 – 16.2 years).

The IESO sick pay benefits accumulate but do not vest. The IESO accrues sick pay benefits based on the expectation of future utilization and records the accrual within accounts payable and accrued liabilities.

j) Foreign currency exchange

Transactions denominated in foreign currencies are converted into Canadian dollars at the rate of exchange prevailing on the date of the transaction. Items on the statement of financial position denominated in foreign currency are converted to Canadian dollars at the rate of exchange as of the date of the financial statements. The cumulative unrealized foreign currency exchange gains and losses of items continuing to be recognized on the statement of financial position are recorded in accumulated surplus as remeasurement gains and losses and shown in the statement of financial position and the statement of remeasurement gains and losses. Upon settlement of the item denominated in a foreign currency, the cumulative remeasurement gains and losses are reclassified to the statement of operations, and all other gains and losses associated with the disposition of the financial instrument are recorded in the statement of operations.

k) Use of estimates

The preparation of the financial statements in conformity with Canadian public sector accounting standards requires management to make estimates and assumptions that affect the reported amounts of revenues, expenses, assets and liabilities, and the disclosure of contingent assets and liabilities as at the date of the financial statements. The IESO's accounts that involve a greater degree of uncertainty include the carrying values of tangible capital assets, accrued pension liability and accrual for employee future benefits other than pensions. Actual results could differ from those estimates.

3. REGULATED ASSETS

The IESO recognizes two regulated assets: 1) unrecovered smart metering expenses and 2) unrecovered PSAB transition items.

The smart metering expenses result from the IESO's role as the SME. As such, the IESO funds its SME operating costs and capital investment in the meter data management/repository (MDM/R) through fees from users of smart meters in Ontario. The OEB approves the SME Charge which is intended to cover the costs of developing and operating the MDM/R.

In 2017, the smart metering expenses were fully recovered, resulting in a $nil balance in the regulated asset account.

The unrecovered PSAB transition items result from the IESO's adoption of Canadian public sector accounting standards effective January 1, 2011. The adoption of PSAB was accounted for by retroactive

application with restatement of prior periods subject to the requirements in Section PS 2125, *First-time Adoption by Government Organizations*. The corresponding change to pension and other post-employment benefits resulted in previously unrecognized actuarial losses and past service costs of $80,617 thousand at the date of transition.

Regulated assets consist of the following:

As of December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Unrecovered smart metering expenses	-	21,623
Unrecovered PSAB transition items	39,529	43,441
Closing balance	**39,529**	**65,064**

IESO also records regulated assets/liabilities within its market accounts (Note 5).

4. LONG-TERM INVESTMENTS

Long-term investments in a balanced portfolio of pooled funds are valued by the pooled funds manager based on published price quotations and amount to $44,811 thousand (2016 – $39,972 thousand). As at December 31, the market value allocation of these long-term investments was 62.8% equity securities and 37.2% debt securities (2016 – 62.3% and 37.7%, respectively).

Balanced portfolio of pooled funds

As at December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Opening balance	39,972	37,019
Net purchase of investments	2,240	2,667
Change in fair value	2,599	286
Closing balance	**44,811**	**39,972**

In addition to the balanced portfolio of pooled funds, the IESO has a long-term deposit with Canada Revenue Agency in the amount of $465 thousand (2016 – $383 thousand) pertaining to the Retirement Compensation Arrangements Trust (Note 8).

5. MARKET ACCOUNTS

a) In 2017, the Government of Ontario announced its Fair Hydro Plan (FHP), which was implemented through the *Fair Hydro Act, 2017*. Under the FHP, the IESO continues to settle the market and recover Global Adjustment from customers, but as a result of the fair adjustment applicable to specified consumers (defined in the Ontario *Fair Hydro Plan Act, 2017*), the IESO collects less than the full amount of the Global Adjustment. The IESO records the shortfall together with the costs of financing the shortfall, the amounts charged to the IESO by the Fair Hydro Trust in respect of the carrying costs of the Fair Hydro Trust, when applicable, and certain other amounts in a Deferred Global Adjustment Variance account. The Regulated Price Plan Variance account balance as of July 1, 2017, was included in the Deferred Global Adjustment Variance. The FHP also shifted the cost of the Ontario Electricity Support Program (OESP) and most of the Rural or Remote Rate Protection (RRRP) program costs from ratepayer- to taxpayer-funded programs. These accounts comprise the market-regulated assets.

The cumulative amount recorded in the Deferred Global Adjustment Variance account to the end of December 2017 was $1,378,000 thousand. On December 21, 2017, a regulatory asset in the amount of $1,179,000 thousand was transferred to the Fair Hydro Trust. As a result, as at December 31, the Deferred Global Adjustment Variance account balance was $199,475 thousand, including interest and carrying charges.

In consideration of the implementation of the FHP, on May 1, 2017, the OEB rescinded the OESP charge and determined to fund the program through the credit balance in the Ontario Electricity Support Program Variance account. Therefore only payments to OESP-eligible customers are currently being made, and the balance in the Ontario Electricity Support Program Variance account at December 31, 2017, was in a credit position of $24,892 thousand, net of interest.

A new rate for the RRRP program under the FHP was effective July 1, 2017. The balance in the RRRP variance account to June 30, 2017, was $6,626 thousand. The new rate has resulted in a further under collection of $5,994 thousand (net of interest) in the second half of the year, resulting in a cumulative balance in the variance of $12,620 thousand as at December 31, 2017.

Components of the market accounts are as follows:

As of December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Cash, restricted for market activities	454,174	244,755
Amounts due from market participants	1,253,417	1,384,407
Interest receivable	217	186
HST receivable	110,156	25,531
Regulated assets/liabilities	187,203	37,873
Total Market Assets	**2,005,167**	**1,692,752**
Market debt	(13,252)	(150,501)
Amounts due to market participants	(1,855,206)	(1,385,790)
Other net liabilities	(136,709)	(156,461)
Total Market Liabilities	**(2,005,167)**	**(1,692,752)**
Closing balance	**-**	**-**

Regulated assets/liabilities consist of the following:

As of December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Deferred Global Adjustment Variance	199,475	-
Regulated Price Plan Variance	-	134,988
Ontario Electricity Support Program Variance	(24,892)	(92,443)
Rural or Remote Rate Protection Variance	12,620	(4,672)
Closing balance	**187,203**	**37,873**

b) Market Debt

$475 Million Credit Facility with OFA

The IESO has an unsecured credit facility agreement with the Ontario Financing Authority (OFA), which will make available to the IESO an amount up to $475,000 thousand. Advances are payable at a variable interest rate equal to the Province of Ontario's cost of borrowing plus 0.25% per annum. The credit facility expires December 31, 2019. As at December 31, 2017, $12,281 thousand was outstanding (2016 – $150,501 thousand).

$2 Billion Credit Facility with OFA

During 2017, the IESO entered into a new unsecured credit facility agreement with the OFA, which will make available to the IESO an amount up to $2,000,000 thousand for the purpose of supporting the IESO's role in the Ontario FHP. Advances are payable at a variable interest rate equal to the Province of Ontario's cost of borrowing plus 0.25% per annum. The credit facility expires September 30, 2022. As at December 31, 2017, $971 thousand was outstanding.

$150 Million Credit Facility with TD Bank

The IESO has an unsecured credit facility agreement with TD Bank, which will make available to the IESO an amount up to $150,000 thousand. Advances are payable at a variable interest rate equal to that of banker's acceptance plus a margin per annum. The credit facility expires April 30, 2020. As at December 31, 2017, no amount was drawn on the credit facility (2016 - $nil).

c) Related Party Transactions

The IESO records the market accounts, assets, liabilities and amounts due to and from market participants held on behalf of the IAM in its statement of financial position. Included in these accounts are amounts due to and from related parties.

The Province of Ontario is a related party as it is the controlling entity of the IESO. The Ontario Electricity Financial Corporation (OEFC), OEB, Hydro One, Ontario Power Generation Inc. (OPG), Fair Hydro Trust and Ministry of Energy are related parties of the IESO, through the common control of the Province of Ontario. Transactions between these parties and the IAM were as follows:

As of December 31, 2017, the IAM had a payable balance due to the OEFC for $31,025 thousand (2016 - $65,711 thousand).

As of December 31, 2017, the IAM had a payable balance with the OEB for $57 thousand (2016 - $ nil).

As of December 31, 2017, the IAM had a receivable balance with Hydro One of $25,018 thousand (2016 - $75,610 thousand).

As of December 31, 2017, the IAM had a payable balance with OPG for $356,611 thousand (2016 - $430,432 thousand).

In 2017 the Fair Hydro Trust paid $1,179,000 thousand and received $6,000 thousand. As at December 31, 2017, the IAM had a payable balance of $3,620 thousand (2016 - $nil).

As of December 31, 2017, the IAM had a receivable balance with Ministry of Energy for $93,854 thousand (2016 – $153 thousand).

6. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

As at December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Relating to operations	35,743	35,630
Relating to tangible capital assets	1,521	3,333
Closing balance	**37,264**	**38,963**

7. REBATES DUE TO MARKET PARTICIPANTS AND ACCUMULATED SURPLUS

In 2017, the IESO recognized $5,422 thousand in rebates due to market participants of system fees (2016 – $12,551 thousand). As at December 31, 2017, rebates due to market participants were $1,422 thousand (2016 – $12,551 thousand).
The IESO's approved regulatory deferral account balance has been historically maintained at a maximum of $10,000 thousand. However, in 2017 the IESO received a decision and order by the OEB to reduce the regulatory deferral account to $6,000 thousand. The 2017 approved regulatory deferral account balance at $ 6,000 thousand was approved by the OEB on October 31, 2017. In December 2017, the IESO rebated $4,000 thousand to market participants.

Prior to 2014, unrealized gains and losses from portfolio investments and foreign exchange were included in the balance of the regulatory deferral account (life-to-date total: $4,144 thousand). As of January 1, 2014, only realized gains and losses are included in this balance.

As at December 31, the components of the accumulated surplus were as follows:

Accumulated Surplus

As at December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Regulatory deferral account (a)	6,000	10,000
Smart Metering Entity (b)	939	-
Accumulated market sanctions and payment adjustments (c)	641	726
Remeasurement gains	6,340	3,762
Accumulated surplus – end of year	**13,920**	**14,488**

a) Regulatory Deferral Account

As at December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Accumulated surplus – beginning of year	10,000	10,000
OEB decision and order	(4,000)	-
Revenues (before rebates due to market participants)	186,559	190,219
Rebates due to market participants	(1,422)	(12,551)
Core operation expenses	(185,137)	(177,668)
Accumulated surplus – end of year	**6,000**	**10,000**

b) Smart Metering Entity – Accumulated Surplus

As at December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Accumulated surplus – beginning of year	-	-
Smart metering charge	25,655	-
Smart metering expenses	(24,716)	-
Accumulated surplus – end of year	**939**	**-**

c) Accumulated Market Sanctions and Payment Adjustments

As at December 31 (in thousands of Canadian dollars)	2017	2016
	$	$
Accumulated surplus – beginning of year	726	492
Market sanctions and payment adjustments	3,176	3,889
Customer education and market enforcement expenses	(3,261)	(3,655)
Accumulated surplus – end of year	**641**	**726**

8. DEBT

Note payable to Ontario Electricity Financial Corporation (OEFC)

In April 2017, the IESO entered into a note payable with the OEFC. The note payable is unsecured, bears interest at a fixed rate of 1.767% per annum and is repayable in full on June 30, 2020. Interest accrues daily and is payable in arrears semi-annually in June and December of each year. As at December 31, 2017, the note payable to the OEFC was $120,000 thousand (2016 – $90,000 thousand). For the year ended December 31, 2017, the interest expense on the note payable was $2,018 thousand (2016 – $1,841 thousand).

Credit facility with OEFC

The IESO has an unsecured credit facility agreement with the OEFC, which will make available to the IESO an amount up to $160,000 thousand. Advances are payable at a variable interest rate equal to the Province of Ontario's cost of borrowing for a 30-day term plus 0.50% per annum, with draws, repayments and interest payments due monthly. The credit facility expires June 30, 2020. As at December 31, 2017, no amount was drawn on the credit facility (December 31, 2016 – $nil).

For the year ended December 31, 2017, the interest expense on the credit facility was $nil (2016 – $nil).

Retirement Compensation Arrangements Trust

In July 2013, the IESO established a Retirement Compensation Arrangements (RCA) Trust to provide security for the IESO's obligations under the terms of the supplemental employee retirement plan for its employees. As at December 31, 2017, the IESO has provided the RCA trustee with a bank letter of credit of $33,141 thousand (2016 – $30,466 thousand) the trustee can draw upon if the IESO is in default under the terms of this plan.

9. POST-EMPLOYMENT BENEFIT PLANS

The IESO provides pension and other employee post-employment benefits, comprising group life insurance, long-term disability and group medical and dental plans, for the benefit of current and retired employees.

Pension plans

The IESO provides a contributory defined benefit, indexed, registered pension plan. In addition to the funded, registered pension plan, the IESO provides certain non-registered defined benefit pensions through an unfunded, indexed, non-registered plan.

Other employee future benefits

The group life insurance, long-term disability and group medical and dental benefits are provided through unfunded, non-registered defined benefit plans.

Summary of accrued benefit obligations and plan assets

(in thousands of Canadian dollars)	2017 Pension Benefits	2016 Pension Benefits	2017 Other Benefits	2016 Other Benefits
	$	$	$	$
Accrued benefit obligation	547,410	507,724	97,358	91,014
Fair value of plan assets	545,400	523,756	-	-
Funded status as of measurement date	(2,010)	16,032	(97,358)	(91,014)
Employer contribution/other benefits payments after measurement date	2,418	2,416	753	588
Unrecognized actuarial (gain)/loss	(29,637)	(53,068)	389	175
Accrued liability recognized in the statement of financial position	**(29,229)**	**(34,620)**	**(96,216)**	**(90,251)**
Market related value of plan assets (as at September 30, 2017)	537,587	506,791	-	-

Registered pension plan assets

As at the measurement date of September 30, the proportion of the fair value of registered pension plan assets held in each asset class was as follows:

	2017	2016
Canadian equity securities	20.6%	20.2%
Foreign equity securities	38.0%	39.9%
Canadian debt securities	34.7%	39.8%
Global infrastructure	4.8%	0.0%
Canadian real estate	1.3%	0.0%
Cash equivalents	0.1%	0.4%
Forward foreign exchange contracts	0.5%	(0.3%)
	100.0%	**100.0%**

Principal assumptions used to calculate benefit obligations at the end of the year are determined at that time and are as follows:

	2017 Pension Benefits	2016 Pension Benefits	2017 Other Benefits	2016 Other Benefits
Discount rate at the end of the period	5.50%	5.75%	5.50%	5.75%
Rate of compensation increase	3.50%	3.50%	3.50%	3.50%
Rate of indexing	2.00%	2.00%	2.00%	2.00%

The assumed prescription drug inflation was 8.00% for 2016, grading down to an ultimate rate 4.50% per year in 2030. Dental costs are assumed to increase by 4.00% per year.

Benefit costs and plan contributions for pension and other plans are summarized as follows:

(in thousands of Canadian dollars)	2017 Pension Benefits	2016 Pension Benefits	2017 Other Benefits	2016 Other Benefits
	$	$	$	$
Current service cost (employer)	10,089	11,117	3,247	3,107
Interest cost	29,487	29,292	5,343	5,120
Expected return on plan assets	(29,058)	(27,626)	-	-
Amortization of net actuarial loss/(gain)	(2,407)	(1,173)	11	(100)
Benefit cost	**8,111**	**11,610**	**8,601**	**8,127**

(in thousands of Canadian dollars)	2017 Pension Benefits	2016 Pension Benefits	2017 Other Benefits	2016 Other Benefits
	$	$	$	$
Employer contribution/other benefit payments	13,502	13,052	2,636	2,377
Plan participants' contributions	6,253	5,811	-	-
Benefits paid	25,457	23,317	2,636	2,377

The most recent actuarial valuation of the registered pension plan for accounting purposes was at September 30, 2017.

Principal assumptions used to calculate benefit costs for the year are determined at the beginning of the period and are as follows:

	2017 Pension Benefits	2016 Pension Benefits	2017 Other Benefits	2016 Other Benefits
Discount rate at the beginning of the period	5.75%	6.00%	5.75%	6.00%
Rate of compensation increase	3.50%	3.75%	3.50%	3.75%
Rate of indexing	2.00%	2.25%	2.00%	2.25%

10. TANGIBLE CAPITAL ASSETS

Net tangible capital assets consist of the following:

Cost of Tangible Capital Assets

(in thousands of Canadian dollars)	As at Dec. 31, 2016	Additions	Disposals	As at Dec. 31, 2017
	$	$	$	$
Facilities	55,973	631	(39)	56,565
Market systems and applications	306,993	3,825	-	310,818
Infrastructure and other assets	63,355	1,294	(32)	64,617
Meter data management/repository	36,911	906	-	37,817
Total cost	**463,232**	**6,656**	**(71)**	**469,817**

Accumulated Amortization

(in thousands of Canadian dollars)	As at Dec. 31, 2016	Amortization Expense	Disposals	As at Dec. 31, 2017
	$	$	$	$
Facilities	(24,301)	(1,694)	39	(25,956)
Market systems and applications	(263,546)	(12,134)	-	(275,680)
Infrastructure and other assets	(52,772)	(4,375)	32	(57,115)
Meter data management/repository	(29,190)	(2,824)	-	(32,014)
Total accumulated amortization	**(369,809)**	**(21,027)**	**71**	**(390,765)**

Net Book Value

(in thousands of Canadian dollars)	As at December 31, 2016	As at December 31, 2017
	$	$
Facilities	31,672	30,609
Market systems and applications	43,447	35,138
Infrastructure and other assets	10,583	7,502
Meter data management/repository	7,721	5,803
Total net book value	**93,423**	**79,052**
Assets under construction	11,624	21,742
Net tangible capital assets	**105,047**	**100,794**

In 2017, there were no adjustments to management's estimates of remaining asset service lives (2016 – $nil). Interest capitalized to assets under construction during 2017 was $170 thousand (2016 – $260 thousand).

11. OTHER REVENUE

In its administration of the IAM, the IESO directs the investment of market funds in highly rated, short-term investments throughout the settlement cycle. The IESO is entitled to receive the investment interest and investment gains, net of investment losses earned on funds passing through the real-time market settlement accounts. The IESO is not entitled to the principal on real-time market investments.

The IESO recognized investment income earned in the market settlement accounts of $3,441 thousand in 2017 (2016 – $ 2,508 thousand).

12. SEGMENT EXPENSES

Expenses by object for 2017 are comprised of the following:

(In thousands of Canadian dollars)	Core Operations 2017	Other Government Programs 2017	Smart Metering Entity 2017	Market Sanctions & Payment Adjustments 2017	Total 2017
	$	$	$	$	$
Compensation and benefits	114,502	212	2,803	2,151	119,668
Professional and consulting	19,516	2,445	14,209	407	36,577
Operating and administration	34,890	39	4,641	703	40,273
Amortization	18,204	-	2,825	-	21,029
Interest	1,801	-	238	-	2,039
Less: Recoveries	(3,776)	-	-	-	(3,776)
Total Expenses	185,137	2,696	24,716	3,261	215,810

In 2017, the IESO signed an agreement with the Minister of the Environment and Climate Change (MOECC) to deliver conservation and energy-efficiency programs. The IESO recognized government transfers revenue of $2,696 thousand in 2017 (2016 - $nil).

Expenses by object for 2016 are comprised of the following:

(In thousands of Canadian dollars)	Core Operations 2016	Other Government Programs 2016	Smart Metering Entity 2016	Market Sanctions & Payment Adjustments 2016	Total 2016
	$	$	$	$	$
Compensation and benefits	107,402	-	2,661	2,180	112,243
Professional and consulting	18,810	-	14,659	770	34,239
Operating and administration	34,386	-	5,705	705	40,796
Amortization	19,577	-	3,861	-	23,438
Interest	1,341	-	540	-	1,881
Less: Recoveries	(3,848)	-	-	-	(3,848)
Total Expenses	177,668	-	27,426	3,655	208,749

13. RELATED PARTY TRANSACTIONS

The Province of Ontario is a related party as it is the controlling entity of the IESO. The OEFC, OEB, Hydro One, OPG and the MOECC are related parties of the IESO, through the common control of the Province of Ontario. Transactions between these parties and the IESO were as follows:

The IESO holds a note payable and an unsecured credit facility agreement with the OEFC (Note 8). Interest payments made by the IESO in 2017 for the note payable were $2,018 thousand (2016 – $1,841 thousand) and for the credit facility were $nil (2016 – $nil). As of December 31, 2017, the IESO had an accrued interest payable balance with the OEFC of $nil (2016 - $315 thousand).

Under the *Ontario Energy Board Act, 1998*, the IESO incurs registration and license fees. The total of the transactions with the OEB was $3,146 thousand in 2017 (2016 – $1,747 thousand).

The IESO performed connection and bulk electric system exception assessments for Hydro One in 2017. In 2017, the IESO invoiced Hydro One $694 thousand (2016 – $610 thousand).

The IESO procures short circuit studies and protection impact assessments as part of connection assessments, approvals and meter services on IESO-owned interconnected revenue meters from Hydro

One. In 2017, the IESO incurred costs of $184 thousand (2016 – $188 thousand) for these services. As of December 31, 2017, the IESO had a net receivable balance with Hydro One of $137 thousand (2016 – $4 thousand).

The IESO performs connection assessment and approvals for OPG, delivers telecommunication services to market participants to connect to the real-time market systems and provides market-related training courses. In 2017, OPG was invoiced $92 thousand (2016 – $124 thousand). As of December 31, 2017, the IESO had a net receivable balance with OPG of $61 thousand (2016 – $5 thousand).

For 2017, the IESO invoiced MOECC $2,257 thousand (2016 – $nil). As of December 31, 2017, the IESO had a net receivable balance with MOECC of $4,101 thousand (2016 – $nil).

14. FINANCIAL RISK MANAGEMENT

The IESO is exposed to financial risks in the normal course of its business operations, including market risks resulting from volatilities in equity, debt and foreign currency exchange markets, as well as credit risk and liquidity risk. The nature of the financial risks and the IESO's strategy for managing these risks has not changed significantly from the prior year.

a) Market Risk

Market risk refers to the risk that the fair value or future cash flows of a financial instrument will fluctuate to cause changes in market prices. The IESO is primarily exposed to three types of market risk: currency risk, interest rate risk and equity risk. The IESO monitors its exposure to market risk fluctuations and may use financial instruments to manage these risks as it considers appropriate. The IESO does not use derivative instruments for trading or speculative purposes.

i) Currency Risk

The IESO conducts certain transactions in U.S. dollars, primarily related to vendors' payments, and maintains a U.S. dollar-denominated bank account. From time to time, the IESO may utilize forward purchase contracts to purchase U.S. dollars for delivery at a specified date in the future at a fixed exchange rate. In addition, the IESO utilizes U.S. dollar spot rate purchases in order to satisfy any current accounts. As at December 31, 2017, the IESO did not have any outstanding forward purchase contracts.

ii) Interest Rate Risk

The IESO is exposed to movements or changes in interest rates primarily through its short-term variable rate credit facility, cash equivalents' securities and long-term investments. Long-term investments include investments in a pooled Canadian bond fund. The potential impact to the securities' value had the prevailing interest rates changed by 25 basis points, assuming a parallel shift in the yield curve with all other variables held constant, is estimated at $659 thousand as at December 31, 2017 (2016 – $602 thousand).

iii) Equity Risk

The IESO is exposed to changes in equity prices through its long-term investments. Long-term investments include investments in pooled equity funds. A 30% change in the valuation of equities as at December 31, 2017, would have resulted in a change for the year of approximately $8,440 thousand (2016 – $7,468 thousand). The fair values of all financial instruments measured at fair value are derived from quoted prices (unadjusted) in active markets for identical assets.

b) Credit Risk

Credit risk refers to the risk that one party to a financial instrument may cause a financial loss for the other party by failing to meet its obligations under the terms of the financial instrument. The IESO is exposed directly to credit risk related to cash equivalents' securities and accounts receivable, and indirectly through its exposure to the long-term investments in a Canadian bond pooled fund. The IESO manages credit risk associated with cash equivalents' securities through an approved management policy that limits investments to primarily investment-grade investments with counterparty-specific limits. The accounts receivable balance as at December 31, 2017, included no material items past due and substantially all of the balance was collected within 30 days from December 31, 2017. The long-term Canadian bond pooled fund is comprised of primarily investment-grade securities.

Market participants are required to provide non-voluntary pre-payments to reduce their electricity financial exposures as determined by the IESO. If collateral is not sufficient to remedy a default amount, the IESO undertakes a default allocation process that recovers the default amount from all remaining non-defaulting market participants.

c) Liquidity Risk

Liquidity risk refers to the risk that the IESO will encounter financial difficulty in meeting obligations associated with its financial liabilities when due. The IESO manages liquidity risk by forecasting cash flows to identify cash flows and financing requirements. Cash flows from operations, short-term investments, long-term investments and maintaining appropriate credit facilities help to reduce liquidity risk. The IESO's long-term investments are normally able to be redeemed within two business days; however, the investment manager of the pooled funds has the authority to require a redemption in-kind rather than cash and has the ability to suspend redemptions if deemed necessary.

i) Market Settlements

In cases where a market participant fails to pay, the IESO will utilize credit facilities to settle the market. If the IESO has exhausted the availability of its credit facilities, then the IESO will pay market creditors on a pro rata basis in proportion to the amounts owed to each market creditor.

ii) Fair Hydro – regulatory asset

In accordance with the Ontario Fair Hydro Plan Act, 2017,

- the IESO will establish a regulatory asset as it continues to settle the market and recover Global Adjustment from customers, but as a result of the fair adjustment applicable to specified consumers the IESO collects less than the full amount of the Global Adjustment. The IESO records the shortfall together with the costs of financing the shortfall, the amounts charged to the IESO by the Fair Hydro Trust in respect of the carrying costs of the Fair Hydro Trust, when applicable, and certain other amounts, in a Deferred Global Adjustment Variance account (such amount a regulatory asset)
- IESO utilizes its credit facilities to fund the amounts recorded in the Deferred Global Adjustment variance account, and
- IESO is permitted to: a) transfer all or a portion of the regulatory asset to a financing entity, and b) after May 2021 fully recover any non-transferred asset from specified consumer.

As a result of the Fair Hydro Plan, the IESO will be required to borrow the amounts to be recorded in the Deferred Global Adjustment Variance Account (see the bulletin above). The IESO has a current $2 billion line of credit with the OFA (see Debt Note 7) with a maturity date of September 30, 2022, to fund these amounts. The IESO expects to continue to transfer the regulatory asset to the financing entity and use the funds of such transfer to

reduce the amounts borrowed. However, the financing entity is not obligated to purchase any transfer(s) offered by the IESO, and therefore the IESO is potentially subject to liquidity risk.

15. COMMITMENTS

Operating commitments

The obligations of the IESO with respect to non-cancellable operating leases over the next five years are as follows:

As at December 31 (thousands of Canadian dollars)	
	$
2018	5,942
2019	4,972
2020	4,202
2021	718
2022	649

16. CONTINGENCIES

The IESO is subject to various claims, legal actions and investigations that arise in the normal course of business. While the final outcome of such matters cannot be predicted with certainty, management believes that the resolution of such claims, actions and investigations will not have a material impact on the IESO's financial position or results of operations.

17. COMPARATIVE FIGURES

Certain of the comparative figures have been amended to reflect adjustments made in the current year. As a result, cash has increased and accounts receivable has decreased by $5,909 thousand. There was no impact to the annual surplus for the year ended December 31, 2016 or the net liabilities and accumulated deficit at December 31, 2016. Other figures have been reclassified to conform with the current year’s presentation.

RE_ EXTERNAL Re_ Fair Hydro Plan Question (2).pdf

From:	Veinot, Cindy (TBS)
To:	LADAK Lubna -TREASURY; Kim Marshall
Cc:	Hosick, Sarah (TBS); Anthony Martinello; LAURETA LAPIRA May -TREASURY
Subject:	RE: EXTERNAL – Re: Fair Hydro Plan Question
Date:	March 28, 2018 4:50:00 PM

thx

From: LADAK Lubna -TREASURY [mailto:lubna.ladak@opg.com]
Sent: March 28, 2018 4:29 PM
To: Kim Marshall; Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS); Anthony Martinello; LAURETA LAPIRA May -TREASURY
Subject: RE: EXTERNAL – Re: Fair Hydro Plan Question

The forecast asset purchases, including financing costs, in $Millions are as follows:

2017 $1,179 (actual)
2018 $2,326
2019 $2,557
2020 $2,812
2021 $2,741

Lubna Ladak | VP Treasury - FHP| Ontario Power Generation
700 University Avenue, Toronto, Ontario M5G 1X6 | 416-592-5984 | Cell 416-578-0219 | Fax 416-592-4189
lubna.ladak@opg.com

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Wednesday, March 28, 2018 9:09 AM
To: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Anthony Martinello <Anthony.Martinello@ieso.ca>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
Subject: EXTERNAL – Re: Fair Hydro Plan Question

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I think we would have to ask fair hydro trust the carrying costs question. I am copying Anthony and Lubna for assistance

Sent from my iPad

On Mar 28, 2018, at 9:06 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim -- can you send me the expected amount of regulatory asset that will be recorded/sold to OPG Trust each year for the next three years. I'm looking to quantify what the AG will say our deficit is in each of the next

three years. I have a schedule that shows the difference between the amount paid to the generator and the amount collected from customers (which is about $2.2B next year), but I'm assuming that doesn't include the interest paid to OPG Trust during those years.

Thanks,

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RE_ EXTERNAL Statement re_ accounting implications of provincial guarantee 1.pdf

From: HARTWICK Ken -FINANCE
To: Veinot, Cindy (TBS); Kim Marshall
Cc: Hosick, Sarah (TBS); LEE John -TREASURY; MAUTI John -FIN & C CTRL
Subject: RE: EXTERNAL – Statement re: accounting implications of provincial guarantee
Date: September 21, 2017 12:16:23 PM

Cindy

We have informally reviewed with EY the concepts from an earlier version of the draft Change of Law Protection Term Sheet which we also provided comments on back to the Province. We believe that the term sheet itself as currently drafted, will not cause an accounting issue but the final agreement could if the "obligor approval" is extended beyond what EY deems to be appropriate provincial oversight. Please note also that EY has already indicated that they will not sign off on their consolidation conclusion until all key agreements are "close to final" because provincial oversight needs to be assessed as a whole and not on an individual agreement basis. They still have concerns about the treatment of interest payments during the moratorium period and the last draft of the province's regulations dealing with management fees, and OEB involvement as these are all still outstanding issues.

I want to ensure that the next version of each of the documents that is reviewed with EY has limited scope to change as we have been substantively changing documents which is leading to questions on the likelihood of final agreements no longer meeting the objectives of OPG and then EY.

Thanks

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Wednesday, September 20, 2017 9:08 AM
To: HARTWICK Ken -FINANCE <ken.hartwick@opg.com>; Kim Marshall <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: EXTERNAL – Statement re: accounting implications of provincial guarantee

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Hi Ken and Kim,

As you may know, the provincial guarantee (now called Provincial Protection and Assurances Agreement) is tracking to Treasury Board on Monday (September 25) for approval. Given you won't have an updated opinion from KPMG at that time nor an updated letter from EY incorporating the impact of this agreement, the request has

been made for each of IESO and OPG to confirm back from an accounting perspective the analysis completed with the respective auditor and a comment on the impact, if any, of this agreement on the accounting by your respective organizations on the Fair Hydro Plan.

Can you let me know if that is doable and send through your comments by EOD tomorrow?

Thanks,

Cindy

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RE_ FAO Report.pdf

From: Picard, Michel
To: Kim Marshall; Susan Nicholson; Petsche, Nadine (TBS); Betik, Matthew
Subject: RE: FAO Report
Date: May 25, 2017 11:54:39 AM

- Requesting an agenda from AG for meeting of June 14
- Date the AOG received a briefing on the transaction
- Provide similar structures in the US to OAG
- OAG/Tim Beauchamp proposed solution - GBE + IFRS
- Our national head of the Professional practice to attend the AG meetings next week and June 14
- Consider a 2nd opinion from another firm on PSAB/regulatory accounting – Deloitte independent as PWC/EY advised OPG

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Thursday, May 25, 2017 9:58 AM
To: Picard, Michel <mpicard@kpmg.ca>; Susan Nicholson <susan.nicholson@ieso.ca>; Nadine.Petsche@ontario.ca; Betik, Matthew <mbetik@kpmg.ca>
Subject: RE: FAO Report

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

- Her committee statement, comments – what clarifications/opposing views would add value to her comments
- Her previous regulatory accounting view – why this is ifrs 14 specific???
- What is worse case – provincial books opinion

Anything else?

Kimberly Marshall | VP, Corporate Services & CFO
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Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

-----Original Appointment-----
From: Georgia Ritchie-Wust **On Behalf Of** Kim Marshall
Sent: May 24, 2017 11:58 AM
To: Kim Marshall; 'Picard, Michel'; Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Conference Call - Call In Details Below

The call will commence once Kim signs on as the moderator

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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RE_ FAO Report.pdf (2).pdf

From: Kim Marshall
To: Picard, Michel; Susan Nicholson; Petsche, Nadine (TBS); mbetik@kpmg.ca
Subject: RE: FAO Report
Date: May 25, 2017 9:57:58 AM

For this afternoon I would like to talk about preparing a document for delivery to IESO board – more of an auditor general response than an FAO. Cover:

* Her committee statement, comments – what clarifications/opposing views would add value to her comments
* Her previous regulatory accounting view – why this is ifrs 14 specific???
* What is worse case – provincial books opinion

Anything else?

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-----Original Appointment-----
From: Georgia Ritchie-Wust On Behalf Of Kim Marshall
Sent: May 24, 2017 11:58 AM
To: Kim Marshall; 'Picard, Michel'; Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FAO Report
When: May 25, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Conference Call - Call In Details Below

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RE_ FHP Nov 21_cv review_v2 8 pm.pptx (2).pdf

From: Veinot, Cindy (TBS)
To: Picard, Michel
Cc: Kim Marshall
Subject: RE: FHP Nov 21_cv review_v2 8 pm.pptx
Date: November 21, 2017 8:36:00 AM

Thanks Michel – we'll take a look at the points below.

Re: the indemnity letter, assuming we'll raise that in the meeting and see where CPA Canada wants to go.

As for the Deloitte letter, I saw Matt on Friday and mentioned to him that he might receive a call from you on this – I think it's worth having a discussion with him.

Cindy

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: November 21, 2017 8:16 AM
To: Veinot, Cindy (TBS)
Cc: Kim Marshall
Subject: RE: FHP Nov 21_cv review_v2 8 pm.pptx

Good morning Cindy,

Great summary of the issues!

Here is my two cents:

Pg 12, 3rd bullet – 2021 (= 4 years) and 26 years instead of 25 years

Pg 18, 2nd bullet – meet the definition of (financial) asset and (financial) liability

Pg 18, 4th bullet – I agree with "being more transparent" – not sure that is sufficient – as mentioned in your bullet above it also meets the definitions of asset and liability

Pg 32 – Should it include a conclusion for the market accounts?

You can share with PSAB/AcSB the KPMG draft report dated May 16, 2017 and the rebuttal document issued to the AG on July 25, 2017 against indemnity letters from the IESO and CPA Canada.

I have not contacted Deloitte to obtain their authorization for the distribution of their opinion. We can discuss.

See you there.

Michel

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Monday, November 20, 2017 8:03 PM
To: Picard, Michel <mpicard@kpmg.ca>; 'Kim Marshall' <Kim.Marshall@ieso.ca>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FHP Nov 21_cv review_v2 8 pm.pptx

Hi Michel and Kim – attached is the current version of the deck. There may be some minor tweaks to this, but it is substantially complete. If you review and notice anything that should be changed, please reply to all and we'll make the change in the morning before the meeting.

Thanks all,

Cindy

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RE_ FHP Nov 21_cv review_v2 8 pm.pptx (4).pdf

From: Veinot, Cindy (TBS)
To: Picard, Michel
Cc: Kim Marshall
Subject: RE: FHP Nov 21_cv review_v2 8 pm.pptx
Date: November 21, 2017 8:36:00 AM

Thanks Michel – we'll take a look at the points below.

Re: the indemnity letter, assuming we'll raise that in the meeting and see where CPA Canada wants to go.

As for the Deloitte letter, I saw Matt on Friday and mentioned to him that he might receive a call from you on this – I think it's worth having a discussion with him.

Cindy

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: November 21, 2017 8:16 AM
To: Veinot, Cindy (TBS)
Cc: Kim Marshall
Subject: RE: FHP Nov 21_cv review_v2 8 pm.pptx

Good morning Cindy,

Great summary of the issues!

Here is my two cents:

Pg 12, 3rd bullet – 2021 (= 4 years) and 26 years instead of 25 years

Pg 18, 2nd bullet – meet the definition of (financial) asset and (financial) liability

Pg 18, 4th bullet – I agree with "being more transparent" – not sure that is sufficient – as mentioned in your bullet above it also meets the definitions of asset and liability

Pg 32 – Should it include a conclusion for the market accounts?

You can share with PSAB/AcSB the KPMG draft report dated May 16, 2017 and the rebuttal document issued to the AG on July 25, 2017 against indemnity letters from the IESO and CPA Canada.

I have not contacted Deloitte to obtain their authorization for the distribution of their opinion. We can discuss.

See you there.

Michel

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Monday, November 20, 2017 8:03 PM
To: Picard, Michel <mpicard@kpmg.ca>; 'Kim Marshall' <Kim.Marshall@ieso.ca>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: FHP Nov 21_cv review_v2 8 pm.pptx

Hi Michel and Kim – attached is the current version of the deck. There may be some minor tweaks to this, but it is substantially complete. If you review and notice anything that should be changed, please reply to all and we'll make the change in the morning before the meeting.

Thanks all,

Cindy

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RE_ Fair Hydro Plan.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS); Hume, Steen (ENERGY); Christie, Tim (ENERGY); "mpicard@kpmg.ca"; Michael Boll
Subject: RE: Fair Hydro Plan
Date: July 19, 2017 9:40:01 AM

When we meet this afternoon can we pls talk about the regulation approach to the funding during the moratorium period.

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: www.ieso.ca <http://www.ieso.ca> | Twitter: IESO_Tweets <http://www.twitter.com/ieso_tweets> |
LinkedIn: IESO <https://www.linkedin.com/company/ieso>

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<https://twitter.com/saveonenergyont> | LinkedIn: saveONenergy
<https://www.linkedin.com/company/saveonenergy-ontario>

-----Original Appointment-----
From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: July 14, 2017 12:19 PM
To: Veinot, Cindy (TBS); Hume, Steen (ENERGY); Christie, Tim (ENERGY); Kim Marshall; 'mpicard@kpmg.ca'; Michael Boll
Subject: Fair Hydro Plan
When: July 19, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Meeting Room 7B, 7th Floor, 77 Grenville Street

To gain access to the meeting room, on the 7th floor lobby area, use the courtesy phone and please dial 4-6223 for Jane Devan or 7-7353 for Wanda Teixeira.

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RE_ Funding from the OFA to the IESO (2).pdf

From: Olga Whiteley
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Kim Marshall
Subject: RE: Funding from the OFA to the IESO
Date: February 22, 2018 8:59:02 AM

Good morning,
The OFA rate has always been (before and after Fair Hydro) the cost to the province plus a spread.
Regards.

Olga Whiteley | Treasury and Pension Operations
Independent Electricity System Operator (IESO) | T: (905) 403-6917 | F: (905) 403-6913
Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca | Email: olga.whiteley@ieso.ca

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: February 21, 2018 6:44 PM
To: Kim Marshall
Cc: Anthony Martinello; Olga Whiteley
Subject: RE: Funding from the OFA to the IESO

Ok -- thanks

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February 21, 2018 6:44 PM
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Olga Whiteley
Subject: Re: Funding from the OFA to the IESO

Copying Anthony and olga...not sure but could check tomorrow

Sent from my iPad

On Feb 21, 2018, at 6:42 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim – just thinking about one of the questions from the session earlier today – prior to the Fair Hydro Act, what rate did the OFA lend to the IESO re: the financing used by the IESO to bridge the difference between payments made to the generators and payments received from the LDCs (e.g. the variance account that had to be settled within 12 months). – Was it at market or the provincial cost of borrowing, or something in between?
>
> Thx

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RE_ Funding from the OFA to the IESO (3).pdf

From:	Veinot, Cindy (TBS)
To:	Kim Marshall
Cc:	Anthony Martinello; Olga Whiteley
Subject:	RE: Funding from the OFA to the IESO
Date:	February 21, 2018 6:43:00 PM

Ok -- thanks

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February 21, 2018 6:44 PM
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Olga Whiteley
Subject: Re: Funding from the OFA to the IESO

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Sent from my iPad

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RE_ Funding from the OFA to the IESO (4).pdf

From:	Veinot, Cindy (TBS)
To:	Olga Whiteley
Cc:	Anthony Martinello; Kim Marshall
Subject:	RE: Funding from the OFA to the IESO
Date:	February 22, 2018 9:15:00 AM

Thanks Olga – what is the spread meant to represent.

Cindy

From: Olga Whiteley [mailto:Olga.Whiteley@ieso.ca]
Sent: February 22, 2018 8:59 AM
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Kim Marshall
Subject: RE: Funding from the OFA to the IESO

Good morning,
The OFA rate has always been (before and after Fair Hydro) the cost to the province plus a spread.
Regards.

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Independent Electricity System Operator (IESO) | T: (905) 403-6917 | F: (905) 403-6913
Station A, Box 4474, Toronto, ON M5W 4E5
Web: www.ieso.ca | Email: olga.whiteley@ieso.ca

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: February 21, 2018 6:44 PM
To: Kim Marshall
Cc: Anthony Martinello; Olga Whiteley
Subject: RE: Funding from the OFA to the IESO

Ok -- thanks

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February 21, 2018 6:44 PM
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Olga Whiteley
Subject: Re: Funding from the OFA to the IESO

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Sent from my iPad

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Thx

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RE_ Funding from the OFA to the IESO.pdf

From: Olga Whiteley
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Kim Marshall
Subject: RE: Funding from the OFA to the IESO
Date: February 22, 2018 11:05:38 AM

Based on verbal discussions we understand the spread mainly accounts for a) administrative expenses, and b) smaller and more volatile IESO's debt (draws may require more capital markets management, which may cause minor slippages in pricing).

Overall, the spread is there to ensure there is no negative impact to the OFA.

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: February 22, 2018 9:16 AM
To: Olga Whiteley
Cc: Anthony Martinello; Kim Marshall
Subject: RE: Funding from the OFA to the IESO

Thanks Olga – what is the spread meant to represent.

Cindy

From: Olga Whiteley [mailto:Olga.Whiteley@ieso.ca]
Sent: February 22, 2018 8:59 AM
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Kim Marshall
Subject: RE: Funding from the OFA to the IESO

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Web: www.ieso.ca <https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ieso.ca%2F&data=01%7C01%7Colga.whiteley%40ieso.ca%7Cc7b41b5b7e6a40b920f708d579fecf54%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=IaRxrx%2FVwSIpFKgxU%2FJABcK9Z6d%2FPj6Q3LK718LXSZE%3D&reserved=0> | Email: olga.whiteley@ieso.ca

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: February 21, 2018 6:44 PM
To: Kim Marshall
Cc: Anthony Martinello; Olga Whiteley
Subject: RE: Funding from the OFA to the IESO

Ok -- thanks

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: February 21, 2018 6:44 PM
To: Veinot, Cindy (TBS)
Cc: Anthony Martinello; Olga Whiteley
Subject: Re: Funding from the OFA to the IESO

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Sent from my iPad

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RE_ IESO - Follow up question (3).pdf

From:	Veinot, Cindy (TBS)
To:	Umar Saeed; Kim.Marshall@ieso.ca
Cc:	Michael Puskaric
Subject:	RE: IESO - Follow up question
Date:	November 29, 2017 3:23:00 PM
Attachments:	image001.jpg image002.jpg

Hi Umar – Just confirming receipt and that we will coordinate with OPG as well and send back a response – probably early next week.

Thanks,

Cindy

From: Umar Saeed [mailto:usaeed@psabcanada.ca]
Sent: November 28, 2017 11:12 AM
To: Veinot, Cindy (TBS); Kim.Marshall@ieso.ca
Cc: Michael Puskaric
Subject: IESO - Follow up question

Dear Kim and Cindy,

We wanted to thank you again for your time the other day. I am going through my notes and I had a few questions for clarification.
I suspect these will be fairly straightforward for you to answer, but I also want to be respectful of your time and if they are too complicated – please let me know.

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?
If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?
Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

I want to ensure I am understanding the process for recovering costs through future rates and the role of the OEB, OFHPA accurately.
I know this is a busy time for both of you and your help is very much appreciated.

Sincerely,
Umar

Umar Saeed, MAcc, CPA, CA
Principal / Directeur de projets
Public Sector Accounting Board / Conseil sur la comptabilité dans le secteur public
Tel / Tél. : 416.204.3462
usaeed@psabcanada.ca
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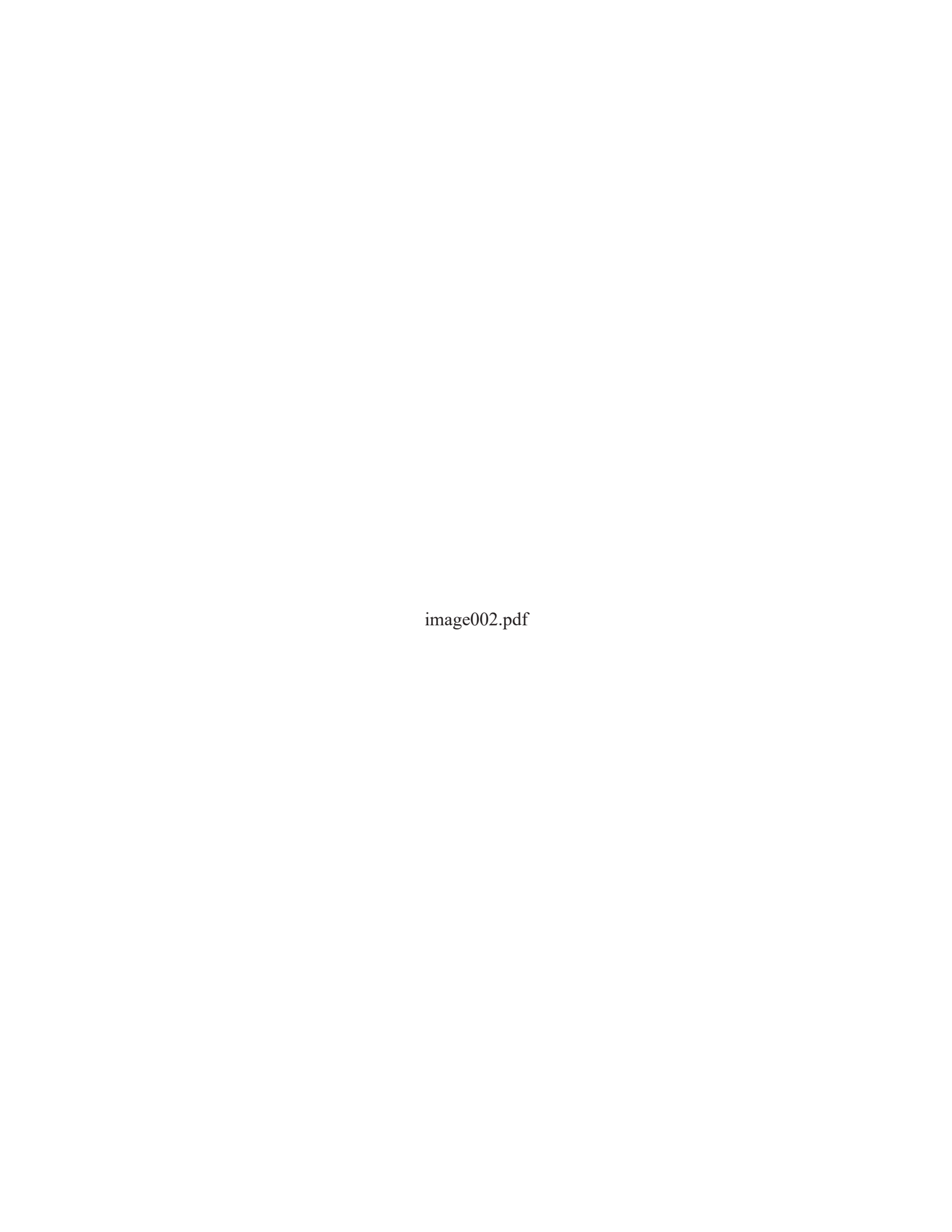
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CCSP
Conseil sur la comptabilité
dans le secteur public

RE_ IESO - Follow up question 1.pdf

From: Kim Marshall
To: Umar Saeed; Veinot, Cindy (TBS)
Cc: Michael Puskaric
Subject: RE: IESO - Follow up question
Date: December 1, 2017 8:25:03 AM

Umar, here are responses to your question. Just so you know, I received input from OPG on these. Please feel free to bring up any other questions you have.

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?

As per the legislation, OPG as the Financial Services Manager, provides the clean energy adjustment recoverable for a specific period to the OEB who establishes the rate for specified consumers.

If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?

The IESO has the original right to recover from future rates. This creates the regulatory asset, like the fair hydro predecessor – RPP. The IESO previously held the RPP variance (differences of Time of use rates versus actual costs) and provided the balance semi-annually to the OEB to support a rate setting process that permitted inclusion of the variance in future rates of RPP consumers.

Parts of the legislation do apply to OPG. For OFHP, the IESO's right to recover the regulatory asset and any obligations will be transferred to the financing entity (Fair Hydro Trust). Once OPG sets up the Fair Hydro Trust and purchases this asset from the IESO, OPG will consolidate the asset in its financial statements.

Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

The OFHPA legislation covers the OEB oversight. The OEB shall set rates (cents/kwh) at which specified consumers are to be invoiced based on the clean energy adjustment, forecast electricity consumption of specified consumers, and costs/fees charged by the Financial Services Manager (OPG). The Act specifies the types of costs and fees the Financial Services Manager can recover. If the OEB disagrees with a cost/fee that the Financial Services Manager has submitted, it can refuse to approve them as described in the legislation.

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Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

---

From: Umar Saeed [mailto:usaeed@psabcanada.ca]

Sent: November 28, 2017 11:12 AM
To: Cindy.Veinot@ontario.ca; Kim Marshall
Cc: Michael Puskaric
Subject: IESO - Follow up question

Dear Kim and Cindy,

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RE_ IESO - Follow up question.pdf

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Cc: Michael Puskaric
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Date: December 1, 2017 8:25:03 AM

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---

From: Umar Saeed [mailto:usaeed@psabcanada.ca]

Sent: November 28, 2017 11:12 AM
To: Cindy.Veinot@ontario.ca; Kim Marshall
Cc: Michael Puskaric
Subject: IESO - Follow up question

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Sincerely,
Umar

Umar Saeed, MAcc, CPA, CA
Principal / Directeur de projets
Public Sector Accounting Board / Conseil sur la comptabilité dans le secteur public
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RE_ IESO 2016 Financial Statements and Notes.pdf

From: Petsche, Nadine (TBS)
To: Kim Marshall
Cc: Susan Nicholson
Subject: RE: IESO 2016 Financial Statements and Notes
Date: June 15, 2017 3:38:00 PM

Thanks Kim (for this and the outreach to Lee Anne).
Nadine

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: June 15, 2017 3:38 PM
Cc: Petsche, Nadine (TBS); Susan Nicholson
Subject: RE: IESO 2016 Financial Statements and Notes

Nadine, fyi re market accounts

Kimberly Marshall | VP, Corporate Services & CFO
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---

From: Kim Marshall
Sent: April 21, 2017 1:25 PM
To: 'Veinot, Cindy (TBS)'
Cc: Petsche, Nadine (TBS)
Subject: RE: IESO 2016 Financial Statements and Notes

Sorry to take so long to get back to you, here is the accounts

As of December 31 (in thousands of Canadian dollars)	2016
Cash, restricted for market activities	244,755
Market Accounts Receivable	1,183,753
Net Congestion Rent Receivable	5728
Global Adjustment Other Charges Receivable	15,480
Interest Receivable	186,486
Closing balance	**1,636,202**
Revolving line of credit	-150,501
HST receivable	25,531
Accounts Payable	-1,326,010
Prepayments	-62,981
Market Interest Payable to IESO Corporate	-2,508
Market Penalties Payable to IESO Corporate	-1,144
Regulated Price Plan Variance	134,988
Provision for Future Transmission Rights Activity	-53,305
Provision for Future Ontario Electricity Support Program Activity	-92,444
Provision for Future Rural or Remote Rate Protection Activity	-4,672
Provision for Future Enforcement Activity	-58,484
Deferred Transmission Rights Revenue	-44,672
Closing balance	**-1,636,202**

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-----Original Message-----
From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: April 19, 2017 12:03 PM
To: Kim Marshall
Cc: Petsche, Nadine (TBS)
Subject: RE: IESO 2016 Financial Statements and Notes

Thanks -- question for you -- I had thought that putting the "market books" on the IESO balance sheet would result in a regulatory account for the delta between what is collected per the RPP and the actual costs paid to the generators -- e.g. the variance account.

Where is that variance reflected in the financial statements -- is it part of the AR or AP from/to the market participants?

Cindy

-----Original Message-----
From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: April-19-17 7:55 AM
To: Veinot, Cindy (TBS)
Subject: FW: IESO 2016 Financial Statements and Notes

fyi

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: https://na01.safelinks.protection.outlook.com/?url=www.ieso.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7C73d0639f36ae4b5a655508d4873da3a0%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=zCxNDjOu1FCVoSaRY3h69YX8d1dQBPtmNei6YTkMALw%3D&reserved=0 | Twitter: IESO_Tweets | LinkedIn: IESO

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-----Original Message-----
From: Susan Nicholson
Sent: March 29, 2017 12:49 PM
To: Patel, Bharat (TBS); Petsche, Nadine (TBS)
Cc: Susan Nicholson; Kim Marshall
Subject: IESO 2016 Financial Statements and Notes

Hello Nadine and Bharat - please find attached our 2016 financial statements and notes.

As previously discussed, the attached includes two new accounting policies. The first is the recognition of rate regulated assets and the second is the inclusion of market accounts on the statement of financial position. Both of the policies are fully described in note 3.

As you review these materials, please let me know if you have any questions.

Regards, Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5
T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca
Web: https://na01.safelinks.protection.outlook.com/?url=www.ieso.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7C73d0639f36ae4b5a655508d4873da3a0%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=zCxNDjOu1FCVoSaRY3h69YX8d1dQBPtmNei6YTkMALw%3D&reserved=0 | Twitter: IESO_Tweets | LinkedIn: IESO
Conservation: https://na01.safelinks.protection.outlook.com/?url=www.saveONenergy.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7C73d0639f36ae4b5a655508d4873da3a0%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=YQhzWaiVgfLv7%2FNAdzwsmxztPWiMJBOZuiOGBaWRgQc%3D&reserved=0 | Twitter: saveONenergyOnt | LinkedIn: saveONenergy "Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals"

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RE_ IESO Audited Financial Statements.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: RE: IESO Audited Financial Statements
Date: March 28, 2018 1:45:56 PM

Has to be done by Tuedsay at the latest

Kimberly Marshall | VP, Corporate Services & CFO

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: March 28, 2018 1:35 PM
To: Kim Marshall
Subject: IESO Audited Financial Statements

Hi Kim – do you know when your audited financial statements will be made public?

Thx

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RE_ IESO Market related items.pdf

From:	Susan Nicholson
To:	Kim Marshall
Cc:	John Rattray; Hosick, Sarah (TBS); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Patel, Bharat (TBS); mpicard@kpmg.ca; mbetik@kpmg.ca
Subject:	RE: IESO Market related items
Date:	January 30, 2017 2:53:06 PM

Kim – as discussed, I have had a discussion with Matthew Betik, our audit partner from KPMG. Matt will lead the engagement to prepare a position paper on this issue and he will be in consultation with Michel Picard.

I will set up time for later in the week to have an initial discussion with Matt and Michel.

Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5

T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: January 30, 2017 12:49 PM
To: Kim Marshall; Petsche, Nadine (TBS); Patel, Bharat (TBS)
Cc: John Rattray; Hosick, Sarah (TBS); Susan Nicholson
Subject: RE: IESO Market related items

Hi Kim,

I think it would be prudent to start updating the analysis now and I would suggest engaging KPMG to issue a position paper on this issue.

Thanks,

Cindy

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RE_ KPMG Draft opinion.pdf

From: Kim Marshall
To: Hosick, Sarah (TBS)
Subject: RE: KPMG Draft opinion
Date: August 28, 2017 1:15:43 PM

Not from us…you may want to check with energy, I believe it was ieso white paper which may have been described as an opinon

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: August 28, 2017 12:58 PM
To: Kim Marshall
Subject: KPMG Draft opinion

Hi Kim,

In preparation for Public Accounts release, we wanted to confirm whether the KPMG final draft of opinion was already made public? (I'm referring to the document called "An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust and to the Recognition and Derecognition of a variance account in relation to the Proposed Fair Hydro Plan Act, 2017")

There was a question of whether this document was handed out publicly already during a previous briefing

Thanks for all your help so far as we prepare for PA release

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

416-212-8512

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RE_ Please advise (2).pdf

From: Petsche, Nadine (TBS)
To: Kevin Reid
Cc: Susan Nicholson; Kim Marshall; Natalie Schaus
Subject: RE: Please advise
Date: July 19, 2017 12:18:00 PM

Thanks everyone!
Nadine

From: Kevin Reid [mailto:kevin.reid@ieso.ca]
Sent: July 19, 2017 11:20 AM
To: Petsche, Nadine (TBS)
Cc: Susan Nicholson; Kim Marshall; Natalie Schaus
Subject: FW: Please advise

Hi Nadine,

Hope this helps:

The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with S78 (2.1) & (3.0.1) of the *Ontario Energy Board Act* and the March 28, 2013 Decision and Order of the Board.

Details are below.

Thanks,
Kevin

Kevin Reid, CPA, CMA | Manager, Financial and Resource Planning & Analysis | Corporate Services
Independent Electricity System Operator (IESO) | T: 416.969.6274
120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1
Email: kevin.reid@ieso.ca | Web: www.ieso.ca
IESO on Twitter: IESO Tweets | IESO on Facebook: The Electricity Outlet
Conservation: www.saveONenergy.ca| Twitter: saveONenergyOnt | LinkedIn: saveONenergy

---

From: Adrian Pye
Sent: July 19, 2017 11:15 AM
To: Kevin Reid
Subject: RE: Please advise

The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with S78 (2.1) & (3.0.1) of the *Ontario Energy Board Act* and the March 28, 2013 Decision and Order of the Board XX[LAP1] .

OEB Act, S78
Rates
(3.0.1) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act, 1998*. 2006, c. 3, Sched. C, s. 5 (1).

The March 28 Decision is available at (http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/388528/view/dec_order_IESO%20SME_20130328.PDF) and it
States:
Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual *Yearbook of Electricity Distributors* shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement Attached as Appendix A.

From: Kevin Reid
Sent: July 19, 2017 11:01 AM
To: Kevin Reid
Subject: FW: Please advise

EB-2012-0100 / EB-2012-0211

From: Susan Nicholson
Sent: July 17, 2017 1:43 PM
To: Kevin Reid
Cc: Kim Marshall; Natalie Schaus
Subject: Fwd: Please advise

Sent from my iPhone

Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** July 17, 2017 at 1:37:08 PM EDT
> **To:** Susan Nicholson <susan.nicholson@ieso.ca>
> **Subject: Please advise**
>
> Hi Susan.
> Hoping you can help fill in the blank below. Thanks. N
>
> The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX[LAP2] .

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To add statute reference.

To add statute reference.

RE_ Please advise.pdf

From: Petsche, Nadine (TBS)
To: Kevin Reid
Subject: RE: Please advise
Date: July 19, 2017 2:11:00 PM

Thanks!
Nadine

From: Kevin Reid [mailto:kevin.reid@ieso.ca]
Sent: July 19, 2017 1:46 PM
To: Petsche, Nadine (TBS)
Subject: RE: Please advise

Hi Nadine,

Glad we could be of help. 1 addition to the reference below I was just informed of … in reference to the Ontario Energy Board Act, it should include the year of inception (1998). It should read:

"… Ontario Energy Board Act, 1998 … "

Thanks,
Kevin

From: Kevin Reid
Sent: July 19, 2017 11:20 AM
To: 'Nadine.Petsche@ontario.ca'
Cc: Susan Nicholson; Kim Marshall; Natalie Schaus
Subject: FW: Please advise

Hi Nadine,

Hope this helps:

The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with S78 (2.1) & (3.0.1) of the *Ontario Energy Board Act* and the March 28, 2013 Decision and Order of the Board.

Details are below.

Thanks,
Kevin

Kevin Reid, CPA, CMA | Manager, Financial and Resource Planning & Analysis | Corporate Services
Independent Electricity System Operator (IESO) | T: 416.969.6274
120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1
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States:

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From: Kevin Reid
Sent: July 19, 2017 11:01 AM
To: Kevin Reid
Subject: FW: Please advise

EB-2012-0100 / EB-2012-0211

From: Susan Nicholson
Sent: July 17, 2017 1:43 PM
To: Kevin Reid
Cc: Kim Marshall; Natalie Schaus
Subject: Fwd: Please advise

Sent from my iPhone

Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** July 17, 2017 at 1:37:08 PM EDT
> **To:** Susan Nicholson <susan.nicholson@ieso.ca>
> **Subject: Please advise**
>
> Hi Susan.
> Hoping you can help fill in the blank below. Thanks. N
>
> The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX[LAP2] .

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To add statute reference.

To add statute reference.

RE_ Please confirm.pdf

From: Betik, Matthew
To: Kim Marshall; Susan Nicholson; Picard, Michel
Cc: Petsche, Nadine (TBS)
Subject: RE: Please confirm
Date: May 26, 2017 7:10:45 AM

I see no errors in this information. I can't speak to the timing of communication between Kim and Bonnie/Bill because I simply don't know those dates.

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: May 25, 2017 5:09 PM
To: Susan Nicholson <susan.nicholson@ieso.ca>; Picard, Michel <mpicard@kpmg.ca>; Betik, Matthew <mbetik@kpmg.ca>
Cc: Nadine.Petsche@ontario.ca
Subject: RE: Please confirm

Here are some dates to add….

Approx. March Fri the 24th or Mon the 27th - I contact Bonnie's ofc and leave a vm
Thurs March 30th - Bill Pelow reaches out to Matt to review
Tues April 4th – Kim leaves vm for Bill Pelow
Friday april 7th – Bill Pelow returns my call
April 20 – Bill Pelow emails asking for meeting with IESO and KPMG
April 24 – IESO and KPMG meetings with auditor general office

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---

From: Susan Nicholson
Sent: May 25, 2017 4:10 PM
To: Kim Marshall; mpicard@kpmg.ca; mbetik@kpmg.ca
Cc: Susan Nicholson; Nadine.Petsche@ontario.ca
Subject: FW: Please confirm

As discussed, Kim will add some other key dates.

Thanks. Susan

From: Susan Nicholson
Sent: May 09, 2017 9:59 AM
To: Nadine.Petsche@ontario.ca

Cc: Kim Marshall; Susan Nicholson
Subject: FW: Please confirm

Nadine - timing of the events surrounding the approval of the audited IESO financial statements was as follows:

- February 28 – in accordance with the audit committee calendar, KPMG and management presented financial statements prior to accounting policy changes to the Audit Committee for information purposes. Management and KPMG discussed the proposed accounting policy changes with the objective of bringing policies and revised financial statements back to the Audit Committee in March.
- March 1 – the Board delegated authority to the Audit Committee to review the accounting policy changes, adjust financial statements for the changes and approve on behalf of the Board
- March 15 – KPMG and management presented the accounting policy changes for rate regulated assets and market accounts to the Audit Committee at a special meeting. The presentation of materials included a memo from KPMG on the accounting policies as well as pro forma financial statements and proposed changes to the notes of the financial statements
- March 22 – KPMG and management presented the audited financial statements to the Audits Committee for approval based on the delegated authority of Board from March 1st. The financial statements were approved on March 22nd.

Nadine, happy to have a discussion

Susan

Susan Nicholson | Corporate Controller, IESO | Station A, Box 4474, Toronto, Ontario M5W 4E5
T: 905.855.6290| C: 905.301.6499 |Email: susan.nicholson@ieso.ca
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO
Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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Begin forwarded message:

> **From:** "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
> **Date:** May 8, 2017 at 5:08:55 PM EDT
> **To:** "Kim Marshall (Kim.Marshall@ieso.ca)" <Kim.Marshall@ieso.ca>
> **Subject: Please confirm**
>
> Hi Kim.
> Cindy has asked that I follow up regarding a comment made by the AG in a meeting last week. With regards to the IESO's recent decision to

adopt rate regulated accounting, the AG said that a set of IESO f/s had presented to the IESO Board on March 21st which did not reflect rate regulated accounting even though IESO management and the external auditors would have known about the impending accounting and the anticipated adoption of rate regulated accounting to follow shortly thereafter.
Can you please confirm the accuracy of the AG's statement.
Thanks in advance.
Nadine

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RE_ Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm).pdf

From: Picard, Michel
To: Petsche, Nadine (TBS); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Hosick, Sarah (TBS)
Subject: RE: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: May 16, 2017 2:37:15 PM

Hi Nadine,

I have availability to attend a meeting after 2pm tomorrow. It should not be a call. However, I am required to obtain authorization from our risk management department. Assuming they accept, we will need, as a minimum, to obtain from IESO a consent, release and indemnity letter.

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, May 16, 2017 1:31 PM
To: Picard, Michel <mpicard@kpmg.ca>; Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)

Kim/Michel,

I understand that a call/meeting is being contemplated for tomorrow afternoon with staff from the FAO to discuss accounting for the FHP. The primary purpose for the meeting is to help the FAO staff to better understand the accounting elements of the GA Refinancing structure to help them as they finalize a report on the topic.

I have been asked to confirm your availability for a 1 hour meeting/call tomorrow afternoon after 2 pm.

Thanks in advance.

Nadine

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<http://pages.kpmgemail.com/page.aspx?QS=2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4>).

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* Disclaimer concerning tax advice <https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html> (http://taxdisclaimer.kpmg.ca <https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html>).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ Public Accounts Technical Briefing 201617_v8_IESO only.pptx (1).pdf

From: Kim Marshall
To: Hosick, Sarah (TBS)
Cc: Veinot, Cindy (TBS); Donaldson, Mark (TBS)
Subject: RE: Public Accounts Technical Briefing 201617_v8_IESO only.pptx
Date: September 7, 2017 7:55:19 AM

Just 2 comments for consideration

- In 2016, the IESO changed the accounting for the market accounts and now recognized these amounts due from market participants as assets and the amounts due to market participants as liabilities.

Add something like

- This was done with the objective of creating greater transparency for the economic activities of the IESO

- The Ontario Power Authority (which was merged with the IESO on January 1, 2015) included similar accounts in

  Change to

- The Ontario Power Authority (which was merged with the IESO on January 1, 2015) included a segment or subset of these accounts in

You are going to be great.

Kimberly Marshall | VP, Corporate Services & CFO
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---

From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: September 06, 2017 5:37 PM
To: Kim Marshall
Cc: Veinot, Cindy (TBS); Donaldson, Mark (TBS)
Subject: Public Accounts Technical Briefing 201617_v8_IESO only.pptx

Hi Kim

Please see attached for updated IESO slides for tomorrow. Based on the meeting earlier, we've reduced into 2 slides + speaking points.

Happy to take have proposed edits for either the slides or the speaking points.

Pw to follow

Thanks,
Sarah

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RE_ Question.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: RE: Question
Date: March 2, 2018 3:02:42 PM
Attachments: RE A market question.msg
RE IESO Market related items.msg

A couple of emails attached which show that we started discussions about market books early – say Jan 22 2017.

Kimberly Marshall | VP, Corporate Services & CFO

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: March 01, 2018 10:19 AM
To: Kim Marshall
Subject: Question

Do you have a record (email, etc.) of the approximate date I asked you to look at the accounting for market accounts?

Thanks,

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RE_ A market question.pdf

From: Susan Nicholson [susan.nicholson@ieso.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]
CC: Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: A market question
Date: Sunday, January 22, 2017 12:55:25

As per our discussions/understanding with external auditors from the beginning of the market, the third paragraph below is part of our significant account policies.

The policy was developed due to the separate entity relationship of the market and the corporation. In the market the IESO acts as the principle for all the market participants.

I know that Julia McNally has raised some "semantic" questions regarding GAM funded transactions not being paid to market participants but as at least one side of the transaction falls within this policy (the funding is done through the market invoices) this practice has been continued under the merged entity. The other side of that transaction is reflected in the corporate balance sheet as an intercompany receivable.

Let me know if you need anything else. (and yes, this type of question does make me panic).

---

b) Revenue recognition
System fees earned by the IESO are based on approved rates for each megawatt of electricity withdrawn from the IESO-controlled grid (including scheduled exports) and embedded generation. System fees are recognized as revenue at the time the electricity is withdrawn. Rebates are recognized in the year in which the regulatory deferral account, before such rebates, exceeds regulated limits.

For 2015, the system fee for the newly amalgamated IESO comprised of the combined rate calculations of the respective pre-amalgamation entities. Specifically, the former IESO rate base was calculated on electricity withdrawn from the IESO-controlled grid (including scheduled exports and embedded generation), whereas the former OPA rate base only considered Ontario electricity consumers. The IESO has submitted a rate case to the OEB for 2016 that proposes the use of one, consistent rate, based on electricity withdrawn from the IESO-controlled grid that includes scheduled exports and embedded generation.

These financial statements do not include the financial transactions of market participants within the IESO-administered markets.

Other revenue represents amounts that accrue to the IESO relating to investment income on funds passing through market settlement accounts, as well as application fees. Such revenue is recognized as is earned.

Interest and investment income represents realized interest income and investment gains or losses on cash, cash equivalents, short-term investments and long-term investments.

Market sanctions represent funds received to offset payments disbursed related to penalties, damages, fines and payment adjustments arising from resolved settlement disputes.

-----Original Message-----
From: Kim Marshall
Sent: January 22, 2017 11:39 AM
To: Susan Nicholson
Subject: A market question

Don't panic just wondering, on what language do you rely on that supports market transaction not in corporate book? Thx

Sent from my iPad

RE_ IESO Market related items.pdf

From: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
To: Kim Marshall [Kim.Marshall@ieso.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]
CC: John Rattray [John.Rattray@ieso.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: IESO Market related items
Date: Tuesday, January 24, 2017 10:37:16

*** EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. ***

Thanks Kim

As discussed, we (OPCD) is going to need documentation of the accounting basis for excluding the activities in the "market" books from the IESO financial statements, and therefore, the consolidated f/s of the Province. I would suggest that this be prepared in connection with KPMG in their role as auditors (although I've kept this email internal to government so as not to unduly involve advisors until you determine appropriate). I expect the architecture of any new solution is going to intersect with this accounting issue, so timing is important.

Thanks,

Cindy

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: January-24-17 8:15 AM
To: Veinot, Cindy (TBS); mpicard@kpmg.ca; louellette@kpmg.ca; Petsche, Nadine (TBS); Patel, Bharat (TBS)
Cc: John Rattray; Pelino Colaiacovo
Subject: IESO Market related items

As discussed in this morning call, attached is the Ernst and Young report on the market settlement. Also attached is a market participants agreement for participation. It is more detail than anyone probably needs but shows the compliance to market rules.

Also attached is the ,market financial statements as of nov 30th. It shows the various balances including approx. 80 million from the OFA, mainly offsetting a 71mil RPP

balance. Happy to discuss further

Kimberly Marshall | VP, Corporate Services & CFO

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RE_ RRA.pdf

From: Petsche, Nadine (TBS)
To: Kim Marshall
Cc: Picard, Michel (mpicard@kpmg.ca); Virani, Shyrose (TBS)
Subject: RE: RRA
Date: June 9, 2017 8:52:00 AM

Thanks Kim.

I've sent a revised invite. Hoping that all will be available at this time. Happy Friday! Nadine

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: June-09-17 8:45 AM
To: Petsche, Nadine (TBS)
Cc: Picard, Michel (mpicard@kpmg.ca); Virani, Shyrose (TBS)
Subject: Re: RRA

Any chance we could move this to the afternoon of the 15th

Sent from my iPad

On Jun 8, 2017, at 12:29 PM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:

Michel/Kim,

Based on a recent call with E&Y (our external advisors), we would like to schedule a short call to provide additional background and details to help E&Y understand the IESO's market related activities and adoption of RRA.

Michel's expertise w.r.t. RRA will be valuable in helping E&Y to understand the interpretation and application of GAAP w.r.t. regulator independence as well. Hope that the proposed time works with your schedule.

Thanks in advance.

Nadine

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RE_ Scanned Copy - KPMG.pdf

From: Picard, Michel
To: Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: RE: Scanned Copy - KPMG
Date: October 13, 2017 9:39:26 AM

Thanks Cindy. We confirm that you can provide the KPMG memo to EY.

Regards,

Michel

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Friday, October 13, 2017 9:33 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: FW: Scanned Copy - KPMG

Hi Michel – please see the attached. Please confirm back that we are OK to provide the KPMG memo to EY.

Thanks,

Cindy

From: Jack, Shannon (TBS)
Sent: October 13, 2017 9:30 AM
To: Veinot, Cindy (TBS)
Subject: Scanned Copy - KPMG

Hi Cindy,

Per your request, please find attached a scanned copy of the KPMG letter that you signed.

Thanks,

Shannon Jack

Administrative Coordinator

Assistant Deputy Minister's Office

Office of the Provincial Controller Division
Treasury Board Secretariat

416-327-2727

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RE_ Statement re_ accounting implications of provincial guarantee (2).pdf

From:	Veinot, Cindy (TBS)
To:	Kim Marshall; Donaldson, Mark (TBS)
Subject:	RE: Statement re: accounting implications of provincial guarantee
Date:	September 21, 2017 7:55:00 AM

I don't believe that IESO would be a party to it, as it's a protection agreement provided by the Province. However, it is important to understand if there is anything in this term sheet that would impact IESO's analysis of their accounting.

Cindy

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: September 21, 2017 7:50 AM
To: Donaldson, Mark (TBS)
Cc: Veinot, Cindy (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

Is this a term sheet that IESO would be a party to – I am assuming yes as it seems very broad?

Kimberly Marshall | VP, Corporate Services & CFO
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From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: September 20, 2017 5:28 PM
To: Kim Marshall
Cc: Veinot, Cindy (TBS)
Subject: FW: Statement re: accounting implications of provincial guarantee

Attached is the latest term sheet.

Mark

From: Veinot, Cindy (TBS)
Sent: September 20, 2017 4:45 PM
To: Kim Marshall
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

Sure – we can set up a time.

Mark – can you send the current version of the protection agreement to Kim.

Thx

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: September 20, 2017 4:32 PM
To: Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

I am not sure anything has changed for IESO as a result of the guarantee but I might not be up to speed, is there someone on your team that I could have a quick conversation with on this, I did hear about some discussions around our OFA line of credit increase that I am going to speak with steen on.

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: September 20, 2017 9:08 AM
To: HARTWICK Ken -FINANCE; Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Statement re: accounting implications of provincial guarantee

Hi Ken and Kim,

As you may know, the provincial guarantee (now called Provincial Protection and Assurances Agreement) is tracking to Treasury Board on Monday (September 25) for approval. Given you won't have an updated opinion from KPMG at that time nor an updated letter from EY incorporating the impact of this agreement, the request has been made for each of IESO and OPG to confirm back from an accounting perspective the analysis completed with the respective auditor and a comment on the impact, if any, of this agreement on the accounting by your respective organizations on the Fair Hydro Plan.

Can you let me know if that is doable and send through your comments by EOD tomorrow?

Thanks,

Cindy

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RE_ Statement re_ accounting implications of provincial guarantee 3.pdf

From:	Kim Marshall
To:	Veinot, Cindy (TBS); Donaldson, Mark (TBS)
Subject:	RE: Statement re: accounting implications of provincial guarantee
Date:	September 21, 2017 7:58:02 AM

Ok

Kimberly Marshall | VP, Corporate Services & CFO
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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: September 21, 2017 7:56 AM
To: Kim Marshall; Donaldson, Mark (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

I don't believe that IESO would be a party to it, as it's a protection agreement provided by the Province. However, it is important to understand if there is anything in this term sheet that would impact IESO's analysis of their accounting.

Cindy

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: September 21, 2017 7:50 AM
To: Donaldson, Mark (TBS)
Cc: Veinot, Cindy (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

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Sent: September 20, 2017 5:28 PM
To: Kim Marshall

Cc: Veinot, Cindy (TBS)
Subject: FW: Statement re: accounting implications of provincial guarantee

Attached is the latest term sheet.

Mark

From: Veinot, Cindy (TBS)
Sent: September 20, 2017 4:45 PM
To: Kim Marshall
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

Sure – we can set up a time.

Mark – can you send the current version of the protection agreement to Kim.

Thx

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: September 20, 2017 4:32 PM
To: Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

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Cc: Hosick, Sarah (TBS)
Subject: Statement re: accounting implications of provincial guarantee

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Can you let me know if that is doable and send through your comments by EOD tomorrow?

Thanks,

Cindy

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RE_ Statement re_ accounting implications of provincial guarantee.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee
Date: September 20, 2017 4:44:00 PM

Sure – we can set up a time.

Mark – can you send the current version of the protection agreement to Kim.

Thx

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Sent: September 20, 2017 4:32 PM
To: Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS)
Subject: RE: Statement re: accounting implications of provincial guarantee

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Kimberly Marshall | VP, Corporate Services & CFO

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Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: September 20, 2017 9:08 AM

To: HARTWICK Ken -FINANCE; Kim Marshall
Cc: Hosick, Sarah (TBS)
Subject: Statement re: accounting implications of provincial guarantee

Hi Ken and Kim,

As you may know, the provincial guarantee (now called Provincial Protection and Assurances Agreement) is tracking to Treasury Board on Monday (September 25) for approval. Given you won't have an updated opinion from KPMG at that time nor an updated letter from EY incorporating the impact of this agreement, the request has been made for each of IESO and OPG to confirm back from an accounting perspective the analysis completed with the respective auditor and a comment on the impact, if any, of this agreement on the accounting by your respective organizations on the Fair Hydro Plan.

Can you let me know if that is doable and send through your comments by EOD tomorrow?

Thanks,

Cindy

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RE_ Timeline of Meetings on Fair Hydro Plan (3).pdf

From:	Kim Marshall
To:	Hosick, Sarah (TBS)
Cc:	Jordan Penic
Subject:	RE: Timeline of Meetings on Fair Hydro Plan
Date:	August 24, 2017 4:14:07 PM

Bruce met with Bonnie on June 19
Peter Gregg met with her on june 27th

Kimberly Marshall | VP, Corporate Services & CFO
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From: Kim Marshall
Sent: August 24, 2017 10:16 AM
To: Hosick, Sarah (TBS)
Cc: Jordan Penic; Lorraine Turnevicius
Subject: Re: Timeline of Meetings on Fair Hydro Plan

I am copying Lorraine who has access to calendars and can provide ceo phone call or meeting times with the AG, thanks

Sent from my iPad

On Aug 24, 2017, at 9:23 AM, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca> wrote:

> Thanks Kim, this is very helpful!
>
> If you have any phone call dates that would also help, trying to put together the comprehensive picture best we can. I've also already reached out to Michel at KPMG, and as well as OPG, Energy, OFA, MOF, etc.
>
> Thanks,
> Sarah
>
> ---
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** August 24, 2017 7:55 AM
> **To:** Hosick, Sarah (TBS)
> **Cc:** Jordan Penic
> **Subject:** RE: Timeline of Meetings on Fair Hydro Plan

Attached is a summary given to our board to June 20 that encompasses more than AG meetings but can help. In addition here are subsequent AG meetings…

June 27th – AG, Barry Neilson met with Bruce Campbell and myself

June 28th – I believe she met or spoke with peter Gregg

July 25th the AG and Barry attended a meeting of the board of directors as an observer

I know there are phone calls that I may not have a record of with the Chair current CEO and former CEO. Do you need that as well? Are you reaching out to KPMG separately? I know she met last Thursday with John Gordon and Michel Picard. Jordan just copying you as another pair of eyes. Thx

Kimberly Marshall | VP, Corporate Services & CFO
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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: August 23, 2017 5:26 PM
To: Kim Marshall
Subject: Timeline of Meetings on Fair Hydro Plan

Hi Kim,

In preparation for the upcoming Public Accounts release, we are putting together backpocket timeline of meetings/calls with government and AG on the Fair Hydro Plan.

Would you be able to send me a list of meeting dates and if any other organizations were present, that IESO (or the IESO board) had with the AG on this topic?

I'm hoping to pull together a consolidated list by end of the week, let me know if this is possible on your end.

Happy to discuss if any questions.

Thanks,
Sarah

Sarah Hosick
Executive Assistant & Special Policy Advisor (A)
Assistant Deputy Minister's Office | Office of the Provincial Controller
Office of the Treasury Board | Treasury Board Secretariat
7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7
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RE_ Timeline of Meetings on Fair Hydro Plan.pdf

From: Kim Marshall
To: Hosick, Sarah (TBS)
Cc: Jordan Penic
Subject: RE: Timeline of Meetings on Fair Hydro Plan
Date: August 24, 2017 7:55:08 AM
Attachments: 16 - Accounting Policies - Sequence.pdf

Attached is a summary given to our board to June 20 that encompasses more than AG meetings but can help. In addition here are subsequent AG meetings…

June 27th – AG, Barry Neilson met with Bruce Campbell and myself

June 28th – I believe she met or spoke with peter Gregg

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Kimberly Marshall | VP, Corporate Services & CFO

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: August 23, 2017 5:26 PM
To: Kim Marshall
Subject: Timeline of Meetings on Fair Hydro Plan

Hi Kim,

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Happy to discuss if any questions.

Thanks,

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

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16 - Accounting Policies - Sequence.pdf

IESO Accounting Policies – Sequence of Activities & Documentation

Date:	Activity and Documentation:	Ref.
February 24	Two white papers sent to audit committee. The first with respect to the IESO's recognition of regulatory assets and the second associated with Global Adjustment smoothing	1 1a 1b
February 29	Letter from Bruce Campbell to DM Serge Imbrogno regarding two white papers. The first with respect to the IESO's recognition of regulatory assets and the second associated with Global Adjustment smoothing	1 1a 1b
February 28	Audit Committee meeting – deferred approval of audited financial statements pending presentation and decision on new accounting policies	
March 1	IESO Board delegated approval of audited financial statements to Audit Committee	
March 15	Approval of new accounting policies Documentation included KPMG memo dated February 23, 2017; pro forma financial statements and new note disclosures	2
March 22	Audit Committee approval of audited financial statements as per Board delegation	
March 27 (approx.)	Kim Marshall phoned Ms. Lysyk's office and left a voice message	
March 30	Bill Pelow from Office of Auditor General (OAG) reached out to Matt Betik to discuss review of the IESO audit file	
March 31	IESO 2016 Audited Financial Statements delivered to MOE	
April 3	IESO 2016 Audited Financial Statements posted to IESO website	
April 4	Kim Marshall left a voice message with Bill Pelow	
April 7	Bill Pelow returned call to Kim Marshall to discuss accounting policy changes, acknowledges voicemails and indicates need for a meeting.	
April 19	Government briefs OAG on Fair Hydro Plan	
April 20	Bill Pelow emailed asking for a meeting with IESO and KPMG	
April 24	White paper on IESO's recognition of regulatory assets was sent to Bill Pelow in advance of meeting with OAG.	1a
April 25	Bruce Campbell, Kim Marshall and Matt Betik met with Auditor General and staff	
April 27	Matt Betik and Michel Picard met with Auditor General and staff	
May 2	OAG request for IESO emails between IESO, KPMG and Ministry pertaining to new accounting policies and Fair Hydro Plan	
May 4	KPMG issued accounting opinion on IESO's use of rate regulated accounting, paper included managements' conclusions.	3
May 10	Summary of KPMG's opinion distributed to Audit Committee. Memo entitled "Update on IESO's role in Global Adjustment smoothing"	4
May 6 (approx.)	Bill Pelow and Barry Neilson reviewed KPMG audit work paper file	
May 10	Letter from Bruce Campbell to Glenn Thibeault entitled "Fair Hydro Plan Impact on IESO Accounting Practices"	5
May 11	OAG request for confirmation on points contained within the white paper	6
May 16	Letter of indemnity from Kim Marshall to KPMG pertaining to sharing of KPMG's accounting opinion outside of IESO	7
May 19	Confirmation sent to OAG on points contained within the white paper. Memo addressed to Barry Neilson	8

May 23	Bruce Campbell and Kim Marshall attend Standing Committee on Justice Policy	9
May 24	Bonnie Lysyk attends Standing Committee on Justice Policy, transcript and opening statement distributed to IESO board.	10
May 24	Financial Accountability Office released a report on the government's Fair Hydro Plan which included some mention of the accounting treatment, and this was distributed to IESO board.	11
May 25	OAG "Submission to Standing Committee on Justice Policy" as posted on the OAG website	12
May 29	Matt Betik, Michel Picard and Reinhard Dotzlaw (KPMG head of Professional Practice) met with the Auditor General and staff	
June 13	In preparation for the Auditor General attendance at June 14th Board meeting, KPMG reviewed their meetings to date with OAG and a briefing paper entitled "Accounting Policy Updates" was circulated at the Audit Committee meeting	13
June 14	Auditor General and staff attend IESO Board meeting. Provided a summary document describing her concerns on "Legislated GAAP"	14
June 16	KPMG completes its required correspondence with OAG in accordance with Group Audit requirements for the Audit of the Provincial Public Accounts	15
June 20	John Gordon and Phil Dowad of KPMG met with Auditor General and staff	

RE_ Your assistance please.pdf

From:	Petsche, Nadine (TBS)
To:	Natalie Schaus
Cc:	Picard, Michel (mpicard@kpmg.ca)
Subject:	RE: Your assistance please
Date:	June 17, 2017 9:48:00 AM
Attachments:	OEB-Report_OPEB_20170518.pdf

Hi Natalie.
Wondering if we can touch base on the request below. I can't seem to find the response which helps to elaborate on the extract below. I'm also attaching a recent report from the OEB which refers to the IESO being rate regulated (see page 9 footnote4).
If you could send/resend the completed documentation, it would be much appreciated.
Thanks.
Nadine

From: Natalie Schaus [mailto:Natalie.Schaus@ieso.ca]
Sent: May-15-17 1:09 PM
To: Petsche, Nadine (TBS)
Subject: RE: Your assistance please

Hi Nadine, sorry I haven't been able to reach you.
This is a link to our 2016 annual reports there is a lot of information in the Notes.
I am happy to help you, my telephone number is 905-855-6348.
I have a few meetings this afternoon, but please send leave me a voice mail or send reply to this message.
Regards, Natalie

http://www.ieso.ca/corporate-ieso/corporate-accountability/financial-reporting

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: May 15, 2017 10:10 AM
To: Natalie Schaus
Subject: RE: Your assistance please

Hi Natalie.
Can you please give me a call. My number is 415 325 8027.
Talk soon,
Nadine

From: Natalie Schaus [mailto:Natalie.Schaus@ieso.ca]
Sent: May 15, 2017 9:49 AM
To: Petsche, Nadine (TBS)
Subject: FW: Your assistance please

Hi Nadine, your information request has been forwarded to me in Susan Nicholson's absence.
Can you please further clarify the information you need?
Thank you, Natalie

From: "Petsche, Nadine (TBS)" <Nadine.Petsche@ontario.ca>
To: "Kim Marshall" <Kim.Marshall@ieso.ca>
Subject: Your assistance please

Hi Kim.
I'm currently working on a paper on the Province's CFS reporting for the FHP. It would be helpful if you could help to complete/expand on the extract below as it relates to various activities of the IESO.
Thanks in advance. Have a wonderful weekend.
Nadine
p.s. I know how much you like to read on the weekend, so I thought I'd attach a copy of a CICA research study undertaken some years back. Although IESO isn't a GBE (i.e. not profit oriented), the fact that is does not receive transfers from the government (so is self-sustaining) and has reasonable expectations that it will recover its costs through future rates, might from a user's perspective lend itself to a reasonable conclusion that it should follow the same accounting treatment that the task force recommended for GBEs. Just my own opinion.

Details of IESO's Rate Regulated Activities:

1. IESO is rate regulated by the OEB in accordance with the *Electricity Act, 1998* and the *Ontario Energy Board ("OEB") Act, 1998* but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
2. Various aspects of the IESO's business subject to rate regulation include:
    1. In accordance with XXX, the OEB's function in IESO's operations is to approve a rate to meet IESO's projected revenue requirement to recover its operational costs incurred in association with their responsibility to maintain the reliability of the IESO-controlled grid and to provide settlement services for balances due/from generators, transmitters, and market participants.
    2. Smart Meter database – per XXX, the IESO is able to recover costs for maintaining the reliability of the IESO-controlled grid and providing settlement services for balances due/from generators, transmitters, and market participants. (confirm that the OEB approves the deferral of the recovery of these expenses. i.e. confirm that the OEB rate order regarding Smart Meter Charges (effective from May 1, 2013 to Oct. 31, 2018) constitutes support for reporting a rate regulated asset under ASC 980.
    3. Pensions - XXX
    4. GA cost - in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates).

    Note that the Market Accounts track the point in time balances of due to/due from generators, transmitters and market participants for market transactions. They are not rate regulated balances for the IESO, but are rather reported as they represent activities of the entity with 3rd parties to which the IESO is a counterparty and should therefore be reported on the entity's books to support transparency and accountability in reporting.

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OEB-Report_OPEB_20170518.pdf

Ontario Energy Board | Commission de l'énergie de l'Ontario

MAY 18, 2017

Report of the Ontario Energy Board

Regulatory Treatment of Pension and Other Post-employment Benefits (OPEBs) Costs

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Introduction and Context

This Report describes the policy of the Ontario Energy Board (OEB) for the regulatory treatment of the cost of pensions and other post-employment benefits (OPEBs) incurred by rate-regulated Ontario energy utilities as part of the overall compensation paid to their employees. Specifically, this Report addresses the manner in which approved pension and OPEB costs are recovered from customers, and establishes principles for the review of the level of these costs for future rate proceedings.

Ontario energy utilities, such as electricity and natural gas distributors and Ontario Power Generation, recover their labour costs in the rates or charges their customers pay. The compensation packages utilities offer their employees include pension plans and OPEBs such as health and dental care. The OEB, consumer advocates and the general public have raised concerns about the generosity of the pensions and benefits offered by utilities.

It is not the role of the OEB to design or require a particular compensation package that utilities must offer. It is the role of the OEB to ensure that the costs that go into the rates paid by customers are reasonable. In deciding what is reasonable, the OEB has to consider present and future ratepayers, as well as the financial health of the utilities. Customers are not well served if a utility cannot afford to maintain reliable service or if they are unable to attract employees with the necessary skills to operate and manage the utility.

This Report does not address the magnitude or level of these costs. The longer term intention of the OEB is to use benchmarking, comparing a utility's proposed costs to those of similar businesses, to assess whether costs are reasonable. The labour costs of utilities, whether outsourced or internal, could be compared to the labour costs of others in the energy industry, and to businesses with employees with comparable skill sets outside the energy industry. The determinations made in this Report are intended to facilitate benchmarking, or at least not to hinder it.

This Report is the conclusion of the consultation on the issues identified by the OEB regarding the recovery of utility pension and OPEB expense. The materials from the consultation are available on the OEB's website. This Report provides principles to guide the review of the costs, addresses mechanisms by which costs are to be presented to the OEB, and considers customer protection from the risk of over-charging both now and in the future.

In summary, this Report establishes the use of the accrual accounting method as the default method on which to set rates for pension and OPEB amounts in cost-based[1] applications. A panel of the OEB can use another method if accrual accounting does not result in just and reasonable rates. This Report also provides for the establishment of a variance account to track the difference between the forecasted accrual amount in rates and actual cash payment(s) made, with an asymmetric carrying charge in favour of ratepayers applied to the differential. The variance account will be effective from the 1st of the month following issuance of this Report, unless otherwise ordered by the OEB.

For some utilities, the OEB has set rates using the cash method and used variance accounts to keep these prior periods open to further adjustments pending the outcome of this consultation. For these utilities, disposition of the variance account would be considered in the next cost-based rate application, if the OEB approves the accrual method to recover pension and OPEB costs in rates. In addition, the new variance account provided for in this Report will be effective upon a transition to the accrual method (if approved) as of the date of a utility's next cost-based rate order.

The OEB will continue to assess compensation strategies in cost-based applications when establishing revenue requirements. As the OEB updates filing requirements for utility rate applications, it will consider the extent to which additional information filings are required to support the assessment of pension and OPEB costs as part of a utility's total cost of compensation.

[1] Cost of Service or Custom Incentive Rate-setting

Principles and Practices

The regulatory principles developed in this Report are intended to guide the OEB, rate regulated utilities, and other stakeholders in evaluating proposals for the recovery of pension and OPEB costs in rates and charges. The OEB reviewed three main sources in establishing the principles:

- Principles put forward by KPMG in a report prepared for the OEB consultation (see Appendix B for consultation process)
- Submissions made by participants in the consultation
- Principles enunciated by the OEB in its *Report of the Board: Transition to International Financial Reporting Standards*

The OEB has concluded that there is no need for separate and distinct principles to guide its approach to the treatment of utility pension and OPEB costs. The regulatory treatment of pension and OPEB costs will be based on established regulatory principles. These principles are:

- fairness
- minimizing intergenerational inequity
- minimizing rate volatility
- appropriate allocation of risk
- transparency
- providing value to customers

The OEB believes that adherence to these principles should achieve a stable, reasonable and efficient level of these costs for ratepayers, and a predictable and fair level of recovery of these costs by utilities. The objective of approving or setting just and reasonable rates will continue to be the primary driver of the regulatory treatment of pension and OPEB costs. The OEB has and will retain the authority to establish regulatory requirements and rate setting methods consistent with these principles.

The policy of the OEB for reviewing utility pension and OPEB costs will be based on principles, and supported by best practices. The OEB will adopt the following practices in its treatment of these costs:

> The regulatory treatment of pension and OPEB costs will be aligned with the financial accounting treatment of these costs where that alignment is consistent with sound rate-making principles and the setting of just and reasonable rates.

The OEB will generally keep its choice of regulatory treatment of pension and OPEB costs (e.g. method used to determine recovery) consistent over time for any given utility.

The OEB, when assessing the reasonableness of pension and OPEB costs, will consider the entire compensation package of a utility, and will in the future be developing more detailed benchmarking for utility costs.

Description of Recovery Methods

A. Pensions

Pension plans are generally identified as Defined Benefit (DB) or Defined Contribution (DC) plans. In a DB plan, the benefits are defined – the amount to be paid out to the retiree is guaranteed. In a DC plan, the amount to be paid out is not guaranteed. It is the contribution which is defined. The eventual payout will depend on the monies accumulated through the contributions made and the returns generated over time.

Pension plans may be multi-employer or single employer. Enbridge Gas Distribution Inc., Union Gas Ltd., Ontario Power Generation Inc., the Independent Electricity System Operator, Hydro One Networks Inc. and some other utilities have single employer plans. Some of these utilities have DB plans, and others a mix of DB and DC plans.

The *Pension Benefits Act* (PBA) establishes minimum standards for registered pension plans in Ontario, including entitlements under the plan, plan administration and funding. For DB pension plans in particular, the PBA mandates that these plans must be funded; in other words, the plan's assets must be sufficient to pay for its liabilities, as determined by a triennial actuarial valuation. The PBA requirements, however, do not apply to non-registered pension plans such as supplemental employee retirement pension plans. For these types of plans, cash payments are often paid directly from the employer to the plan beneficiaries.

Most municipally-owned electricity distributors are under a multi-employer plan, the Ontario Municipal Employees Retirement System (OMERS) Plan. While OMERS is a DB plan, for accounting purposes, it is effectively treated as a DC plan by the participating distributors. This means that the annual employer contributions made to the plan are the same as the accrual accounting expense recorded for financial statement purposes. OMERS determines the level of contribution required from each of the participating organizations and all plan risks are borne and shared by its participating organizations and the organizations' employees.

Currently, there are two main ways in which pension costs are recovered in rates.

Accrual accounting is the method required for financial statement reporting purposes and is based on the underlying accounting standard for pension costs. On an accrual accounting basis, pension expenses are incurred and recognized when an employee's service is rendered and the benefit is earned, not when the actual benefit payments are made to retirees, nor when the contributions to the plan are made by the employer. Amounts recovered in rates represent the estimated cost of the benefits earned by a

utility's employees in a given year as determined by an accounting based actuarial valuation.

The second method used to recover pension costs is the funding contribution method, sometimes referred to as the "cash" method. Under this method, costs recovered are based on estimated annual employer contributions to the pension plan, calculated through an actuarial funding valuation. The funding valuation calculates the annual contribution necessary to fund the future pension liabilities. It is prepared in accordance with the requirements of the PBA and the assumptions and methods recommended by the actuary as discussed with the management of the utility.

Since most electricity distributors in Ontario participate in the OMERS pension plan, they are not affected by the accrual versus funding contribution debate for recovery of pension costs. As OMERS is accounted for as a DC plan for financial statement reporting purposes, the annual contributions made to the plan (funding contribution method) will equal the accrual accounting cost (accrual method).

However, for those utilities that have single employer pension plans, the difference between the costs calculated under the accrual method and the funding contribution method can be significant (see example in Appendix A to this Report). While these utilities must record the amounts generated by the accrual method in their financial statements, there is no requirement that the OEB must set rates to recover the accrual amount. Because of the current economic situation with persistent low interest rates and other factors, for some utilities with single employer DB plans, the actuarial accounting valuations have led to an accrual number that is higher than the number calculated on a funding contribution basis. However, there is no guarantee that this trend will continue in the future.

The OEB's consultant, KPMG, put forward a third method for recovering pension costs in the rates of utilities with single employer DB or mixed plans. This "modified funding contribution" method uses a subset of the costs included in a utility's required funding contribution as governed by the PBA, along with a deferral account for the remainder (which may include any voluntary payments that a utility may wish to include for strategic reasons[2]).

[2] The strategic reasons typically include consideration of such factors as: the corporate tax benefits, market risk management strategy for fund assets, lower Pension Benefits Guarantee Fund fees and the potential to avoid the necessity of an annual funding valuation. (KMPG Report, page 26)

B. OPEBs

Most Ontario energy utilities recover their OPEB costs based on the accrual method. This method, as for pensions, recognizes the cost of OPEBs as an employee's service is rendered and the benefit is earned. An alternative is the cash or "pay-as-you-go" method, in which the OPEB costs for a given year are based on what the utility actually pays to retired employees (or more likely, pays in premiums to an insurer) for OPEBs. The cash method fails to consider the level of post-retirement benefits that a current employee has earned in a given year. Along with the absence of a funding plan, this means that the difference between the OPEB costs calculated under the accrual method and the cash method can be significant for some utilities (see example in Appendix A to this Report).

Some utilities that do not incur material amounts of OPEB costs may not conduct actuarial valuations for accounting purposes, and therefore the OPEB expense reported on their financial statements may be equivalent to the pay-as-you-go amount.

KPMG also put forward a potential third method for recovering OPEB costs in the rates of utilities, the "adjusted pay-as-you-go" method. Under this approach, the cash method would be the starting point and would then be increased by an additional amount that is established by the OEB. KPMG suggested that this additional amount could be based on an approach such as the annual amortization of OPEB costs that are included in Other Comprehensive Income plus a portion of the OPEB costs determined using the accrual accounting method.

Policy of the OEB

A. Accrual Method

The OEB will use the pension and OPEB amounts determined through accrual accounting in rate-setting, unless that method does not result in just and reasonable rates. If the accrual accounting method is used, a variance account will be used to track the difference between the forecasted accrual amount in rates and actual cash payment(s) made. An asymmetric carrying charge sub-account in favour of ratepayers will be used, for the reasons given in the next section.

Aligning regulatory treatment with the financial accounting treatment of the costs supports using the accrual method as the default method for calculating the amount of pension and OPEB costs to go into rates. However, OEB panels are not bound by this policy to use the accrual method for rate-setting if the use of that method produces a result that is not just and reasonable in the circumstances of any given utility. The principles enunciated above can assist the OEB and stakeholders in determining the best method for setting rates.

Utilities currently on the accrual method, and proposing to remain on accrual for rate-setting, are not required to justify the use of that method, but must still file the evidence required by the OEB to support the quantum . The approved accrual amount embedded in rates is not expected to change or escalate during an IRM or Custom IR term expect in cases where in a Custom IR term, updated forecasts for subsequent years of the term were approved. The OEB has determined that the actual cash payments (including any special payments for pensions), should be supported by an objective source such as an actuarial report or audited financial statements.

The result of setting rates based on the accrual method could be unacceptable in some cases. As setting just and reasonable rates is the primary driver of the regulatory treatment of pension and OPEB costs, providing value to customers and assuring fairness to both present and future ratepayers is a necessary component of the regulatory treatment of pension and OPEB costs.

Utilities proposing to set rates using a method other than accrual must support such a proposal with evidence giving consideration to these factors, and the principles and practices enunciated in this Report. The intended practice of maintaining a consistent method used to determine recovery over time may be one reason for not adopting the accrual method for rate setting. Stability and predictability in regulation are desirable unless unintended and undesirable effects occur.

The issues raised by transitioning between recovery methods may be serious and difficult to resolve fairly, whether the transition is from or to the accrual method. For example, a change to the cash method could involve a difficult calculation to determine the cumulative amount that a regulated utility has already recovered from customers in the rates charged to date, compared to what would have been collected in the rates to date had these amounts been recovered using the cash method (the cumulative difference to date). The KPMG Report refers to this cumulative difference to date as a potential "windfall" for regulated entities because customers could end up paying for the same cost twice[3].

The OEB is of the view that if a particular case demonstrates that a transition is necessary to set just and reasonable rates and the transition issues are manageable for that particular utility, it is open to a panel to require a transition to a recovery mechanism suitable for that utility's particular circumstances. In such a case, the OEB could require the utility to calculate the cumulative difference to date for disposition.

Having considered the modified funding contribution method for pensions and the adjusted pay-as-you-go method for OPEBs, the OEB has determined that these methods are complicated and involve significant judgement on the part of the regulator. The OEB finds that the accrual method, supplemented with a mechanism to address over-collection, is the best alternative for most Ontario utilities[4].

While consistency in the choice of recovery method among utilities might be desirable, the movement towards greater benchmarking is not compromised if an inconsistency exists. Benchmarking will be performed on the basis of the figures in utility financial statements, not the amount that is collected in rates in a given year. In addition, pension and OPEB costs are one part of the compensation package offered by a utility and therefore only a portion of its labour costs. The OEB intends to compare costs at a higher level than the pension and OPEB amounts.

B. Variance Tracking Account

The difference between the costs calculated under the accrual method and the cash payment(s) made in a specific time period (e.g. a year) can be significant. There is no

[3] KPMG Report, pages 37-38 (pensions) and 78 (OPEBs)

[4] In its submission, the IESO stated that due to its unique nature and structure as a not-for-profit entity, it does not believe it is practical or beneficial to ratepayers for the OEB to apply the same reporting (and recovery) methods as it may determine for other enterprises with share capital. The OEB is of the view that the IESO is a rate regulated entity and the extent that the mechanism established in this Report (or an alternative mechanism that meets the spirit of this policy) should apply to the IESO will be reviewed and determined in the IESO's next fees case.

guarantee that any particular method will produce a lower cost in a given year.[5] Whatever method is selected on which to base cost recovery, the principles of fairness, appropriate allocation of risk, and value to customers dictate that some response to over-collection should be part of the OEB's regulatory treatment of pension and OPEB costs.

Where pension and OPEB amounts collected in rates are higher than payments made by the utility, current ratepayers are in effect lending money to the utility to fund future obligations. KPMG suggested four possible methods to provide value to customers for this loan. Two methods dealt with over-collection and the other two dealt with ensuring solvency. The solvency issue, which primarily concerns OPEBs, is dealt with in the next section of this Report. The two mechanisms suggested for over-collection were a regulatory variance tracking account that attracts carrying charges which would be returned to ratepayers and a reduction to rate base by an amount equivalent to the excess recoveries.

The OEB finds that using a variance account is preferable to adjusting rate base, given the principles established in this Report. A reduction to rate base results in a return to ratepayers at a utility's weighted average cost of capital, which may not be an accurate reflection of what a utility's borrowing cost would be at a point in time. As current ratepayers are in effect lending money to the utility to fund future obligations, the tracking account option would provide the OEB with flexibility to ensure that the value being returned to ratepayers is fair, that it reasonably approximates what the utility would pay for a loan made against its borrowing capacity, and that is within the utility's debt capacity. The OEB also finds that the use of a tracking account provides for greater transparency to facilitate the eventual disposition of the carrying charges.

The application of the carrying charges will be asymmetric, similar to the asymmetric approaches established by the OEB from time to time for capital cost variances and earnings sharing mechanisms. The utility will not be compensated for under-recoveries unless the financial viability of the utility would be compromised by such an arrangement.

The account will be established at a point in time, and for most utilities it is difficult to know with certainty whether over- or under-collection occurred in the past. Whatever the past trends, the utilities had and continue to have, significant control over the costs of their pension and OPEB plans: they design their compensation structure, negotiate collective bargaining agreements, and have input on the actuarial assumptions upon which the costs in the financial statements are based. Ratepayers are required to pay

[5] See example in Appendix A

the rates the OEB approves based on a review of information filed by the utilities. Therefore, where the amount collected in rates exceeds the monies paid out by a utility for its pension and OPEB plans, ratepayers should be paid a return on the money they have "lent" the utility.

A control variance account (with appropriate sub-accounts) will be established on a generic basis effective on the 1st of the month following the issuance of this Report, to be used by all rate regulated utilities subject to the parameters outlined in Appendix C. The variance account will act as a tracking account and only carrying charges applied to the account will be subject to disposition. Utility-specific accounting orders will not be required for the use of this account. Guidance is provided with respect to journal entries in Appendix D. It is open to panels of the OEB in future rate applications to issue revised accounting orders if the evidence in a particular case requires deviations from this policy.

For some utilities, the OEB approved the recovery of their pension and OPEB costs on a cash basis as an interim measure pending the outcome of this pension and OPEB consultation. Variance accounts were used to capture the difference between the cash and accrual methods in order to keep the period open for final adjustments once the outcome of the consultation was known. These utilities are required to continue to record amounts into the previously approved account(s) until the effective date of a utility's next cost-based rate order. Utilities will be expected to dispose of the account(s) at their next cost-based application[6] if the OEB approves the accrual method to recover pension and OPEB costs in rates. The affected utilities may have to consider mitigation measures if the net impact on ratepayers from the disposition of these accounts is significant. Presuming that the OEB orders that these utilities will recover costs for that interim period based on the accrual method, they will be required to credit to ratepayers the carrying charges on the balance on a prospective basis. Appendix C of this Report provides guidance as to how this is to be done.

These utilities are also required to begin recording entries in the new variance account, effective from the date that the utilities' rates are set based on the accrual amount for pensions and OPEBs (i.e. typically the effective date of the rate order of its next cost-based application).

[6] This will depend on the timing of a cost-based application (cost of service or Custom IR) and the availability of audited financial statements to support balances.

C. Interest Rate

Carrying charges on the new tracking account will be assessed on the monthly opening account balance at the OEB's prescribed Construction Work In Progress (CWIP) rate. Several different interest rate options were considered in this consultation ranging from the low end of the OEB's prescribed rate for deferral and variance accounts (currently at 1.1%) to a utility's weighted average cost of capital (WACC), which may be in the 6.5% range for most utilities. The OEB views the prescribed CWIP rate (currently at 2.81%) as establishing a balance between the longer term nature of financial loans and investments required to support pension and OPEB costs and the shorter term nature of the time required for a utility to carry any differential between the accrual and cash amounts (typically five years at the maximum).

The OEB is of the view that ideally, the CWIP rate (representing more of a mid-term rate) could apply for amounts expensed, while a utility's WACC could apply for amounts that a utility may capitalize. However, this approach may not provide sufficient incremental value to justify the added complexity of tracking amounts that are capitalized separately from those that are expensed. Utilities are instead expected to track the gross cost flowing from their actuarial valuations. Utilities that do experience a material impact due to the capitalization of a significant portion of pensions and OPEBs may propose an enhanced methodology for determining the account balance and the appropriate carrying charge to be applied.

D. Accounting Frameworks

As noted in the KPMG report, a utility's accounting framework would affect the level of accrual expense a utility recognizes for its pension and OPEBs. This is partially due to the difference in the accounting treatment of actuarial gains and losses, which are the gains and losses that arise from experience adjustments and changes in actuarial assumptions. Under United States Generally Accepted Accounting Principles, a utility can choose to recognize these gains and losses immediately in net income, or initially in Other Comprehensive Income (OCI) and then amortize them into net income over time. Under International Financial Reporting Standards (IFRS), a utility must recognize all actuarial gains and losses in OCI, but these amounts are never amortized into net income. Under Accounting Standards for Private Enterprises, all actuarial gains and losses are immediately recognized in net income. As the pension and OPEBs accrual amount that is recovered in rates is derived from the accounting expense recognized in net income, utilities who are recovering their pension and OPEB costs on an accrual basis under IFRS will not be able to dispose of any amounts pertaining to actuarial gains and losses because they will never form part of net income.

The OEB recognizes that this issue may not affect a large number of utilities because most utilities under IFRS participate in the OMERS pension plan, where the accrual expense equals the employer contributions made to the plan. Furthermore, for those utilities with OPEB plans, their OPEB expense and any actuarial gains and losses may not be significant relative to other costs incurred by these utilities. For some utilities, the OEB has already approved the use of a deferral account to capture the cumulative actuarial gains or losses in post-retirement benefits.

As at the date of this Report, utilities that have approved deferral accounts have not requested disposition.[7] In some cases, gains and losses may offset each other over time, and no material amount may remain for disposition. In these cases, the account may act only as a tracking account. In addition, this matter was not the focus of this consultation. For these reasons, the OEB has not made a determination on a generic approach to the regulatory treatment of actuarial gains and losses under IFRS. The OEB will consider the potential need for further analysis and guidance on this matter in due course.

E. Set-Aside Mechanism

Solvency of the pension and OPEB plans of Ontario utilities is important: will the money be there to provide the promised benefits to future retirees? The OEB is not the regulator responsible for ensuring solvency of pension plans. In Ontario, the PBA legislates the solvency requirements for defined benefit pension plans and, in particular, requires that a registered defined benefit pension plan must be fully funded (the assets of the plan are adequate to cover its liabilities). The funding status of a plan is determined by a triennial actuarial valuation. If the valuation identifies a funding shortfall (liabilities greater than assets), then the PBA requires that the employer make special payments in addition to the employer's usual contributions to the plan, over a specified period of time in order to fund this shortfall. In addition, due partially to the funding requirements of pension plans, it is likely that neither the accrual nor cash (funding contribution) method will consistently produce a higher cost. The direction of the variance would generally be expected to reverse over time (see Appendix A: example of OPG's pension costs for the next five year period). No set-aside mechanism is necessary for pensions at this time.

Regulations and requirements for OPEBs and unregistered pension plans are less rigorous than for registered pension plans. There is no legislative requirement imposed on plan administrators to ensure that these plans are adequately funded. Most utilities

[7] Four of the seven utilities with this deferral account have had the opportunity to request disposition of this account but have proposed to defer disposition.

have used amounts collected in rates for OPEBs for example, to pay benefits to employees who are already retired, and where the amount collected exceeded the amount needed for this purpose, the excess has been used for “general corporate purposes”, e.g. to fund capital investments or ongoing operating costs.

KPMG suggested two possible set-aside mechanisms that could be used to ensure the funds collected for future OPEB costs remain available for their intended purpose: a separate trust fund, similar to a retirement compensation arrangement, or an internally segregated account.

The OEB recognizes that the disadvantages to these set-aside mechanisms could include:

- Tax implications: Neither mechanism is tax-efficient, and the taxes paid by utilities (and recovered from ratepayers) may increase
- Potential implications for credit risk: Internally segregated funds remove cash from general funds. This means the utility may need to increase its debt, possibly affecting its credit risk profile
- Potential increase in debt costs: Costs to ratepayers could increase to cover increased debt costs

In its letter following the consultation[8], the OEB recognized the concerns with internally segregated accounts and retirement compensation arrangements.

The OEB will not prescribe a set-aside mechanism for OPEBs as part of this policy. However, the OEB expects that utilities will manage and accept the risks inherent in funding OPEB plans. Utilities have the responsibility to manage their cash flows over time. The OEB expects that utilities will not seek further recovery from ratepayers if their cash requirements exceed their accrual expense in the future.

The OEB monitors the performance of utilities and the financial viability of the sector. For some utilities, OPEB costs can be a significant component of their overall compensation envelope and have the potential to adversely affect the financial health of utilities if not managed appropriately. The OEB will consider if and how a further reporting mechanism related to OPEBs can assist in enhancing the OEB’s existing monitoring of overall financial viability. The OEB will consider the best way to monitor how a utility is demonstrating accountability for management of OPEB funding and the steps taken to ensure that it will have sufficient cash available as a corporation when its cash needs exceed accrual amounts in any given year.

[8] August 10, 2016

If the OEB observes over time that utilities are in general not taking responsibility for adequate OPEB funding and not accepting the risk of under-funding, the OEB will consider a further review of set-aside mechanisms on a generic basis.

Appendix A: Examples of differential between accrual and funding/cash methods

The following is Ontario Power's Generation accrual versus cash differential for pensions and OPEBs:

	$ million	2008 Actual	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Actual	Total 2008-13	2014 Plan	2015 Plan
	Pension									
1	Accrual Basis-recoverable in payment amounts	121.4	141.4	150.1	195.0	286.1	383.3		471.3	405.3
2	Cash Basis	198.6	206.1	208.5	235.5	297.1	242.9		321.9	329.6
3	Difference (1-2)	(77.2)	(64.7)	(58.4)	(40.5)	(11.0)	140.4	(111.4)	149.4	75.7
	Other Post-Employment Benefits									
4	Accrual Basis-recoverable in payment amounts	119.2	162.5	161.0	173.2	203.0	231.3		204.6	212.8
5	Cash Basis	44.2	43.1	43.4	48.4	57.9	61.2		89.6	95.8
6	Difference (4-5)	75.0	119.4	117.6	124.8	145.1	170.1	752.0	115.0	117.0

2008-2013 excludes newly regulated hydroelectric

Source: EB-2013-0321, OEB Decision with Reasons, dated November 20, 2014, Page 84

Updated Forecast of Nuclear Pension and OPEB Accrual to Cash Differential* ($M)

	2017	2018	2019	2020	2021
Pension	14.4	(28.9)	(77.2)	(84.4)	(86.8)
OPEB	78.7	78.8	78.6	78.4	78.5
	93.1	49.9	1.4	(6.0)	(8.3)

*positive values represent excess of accrual costs over cash amounts

Source: EB-2016-0152, Exhibit N1, Tab 1, Schedule 1, Page 13

Appendix B: The Consultation Process

The OEB used a consultative process to gather information and advice from stakeholders for the preparation of this Report. The OEB dedicated a specific page on its website to the consultation, which provides links to all materials considered by the OEB.

The main steps in the consultation were:

May 14, 2015 Initiation letter

The OEB issued a letter on May 14, 2015, in which the OEB:

- Set out the objectives of the consultation
- Described the initial steps in the consultation
- Invited registration for participation in the consultation
- Invited applications for cost award eligibility
- Invited submissions on an initial set of questions in three areas: general principles, information requirements, and accounting and recovery in rates of pension and OPEB costs (as well as any other issues participants cared to address)
- Announced the retention of the accounting firm KPMG by the OEB to provide assistance on relevant technical issues

June 10, 2015 letter

In this letter the OEB:

- Noted the registration of 28 participants, including rate regulated utilities, labour unions of energy sector employees and representatives of energy consumers
- Granted cost eligibility to six associations representing energy consumers
- Extended the filing deadline for initial submissions, in response to requests from participants

July 31, 2015 submissions filed

Nineteen registrants filed submissions on July 31, 2015.

Over the following nine months, KPMG prepared a Report for the OEB, and the OEB received the report and considered the next steps for the consultation.

May 19, 2016 letter

By way of a letter dated May 19, 2016, the OEB provided a link to the KPMG Report which was posted on the OEB website, and announced a stakeholder forum to be held July 19 and 20, 2016. With respect to the forum, the OEB:

- Set out the structure of the forum
- Provided a draft issues list for the forum and invited comments on the draft issues
- Invited registrants to indicate their intention to make a presentation at the forum

July 19 and 20, 2016 Stakeholder Forum

The forum was held over two days in July, 2016, and consisted of three parts:

- A presentation by KPMG consultants giving an overview of pension and OPEB accounting, and methods presently used by Ontario regulated utilities for accounting and recovery of these costs
- A presentation by KPMG of the content of the KPMG Report
- Presentations from representatives of five regulated utilities

At each stage of the forum, presenters answered questions posed by forum participants. Participation was available by webcast and telephone.

August 10, 2016 letter

In its letter of August 10, 2016, the OEB provided guidance for written submissions to be filed on September 22, 2016. The OEB asked that participants focus their submissions on:

- The principles the OEB should adopt in considering the regulatory treatment of pension and OPEB costs
- The best options for cost recovery mechanisms for these costs
- Two of the “set-aside” mechanisms proposed by KPMG should accrual accounting values be used in rate setting

September 22, 2016 submissions received

Fourteen submissions were filed by participants on this date. The OEB considered these submissions, as well as the other material obtained through this consultation, in preparing this Report.

Appendix C: Accounting Guidance

Pension and OPEB Forecast Accrual versus Actual Cash Payment Differential variance account

The OEB provides for the establishment of the Pension and OPEB Forecast Accrual versus Actual Cash Payment Differential variance account on a generic basis in this Report. This account will track the differences between the forecast accrual amounts recovered in rates and the actual cash payments made for both pension and OPEBs in one account, on a go-forward basis from the date the account is established. The account will not capture differences that occurred in the past, although the OEB may have previously approved a variance account to capture the accrual versus cash differential for certain utilities, pending the outcome of this consultation. This is discussed further below.

For most utilities, the account will be effective on the 1st of the month following the issuance of this Report. For those utilities with a previously approved variance account, the new account will be effective as of their next approved cost-based rate order if the accrual numbers for pension and OPEB costs are included in rates.

The forecast accrual reference amount that will be used to calculate the entries recorded in this new account assumes that the total gross accrual cost as determined by an actuarial valuation is what is recorded in a utility's total OM&A expense. If a utility capitalizes a material portion of its total pension and OPEB accrual costs, and there is sufficient incremental value to warrant the added complexity of tracking amounts that are capitalized separately from those that are expensed, the utility may propose an enhanced methodology for determining the reference amount and the appropriate carrying charge to be applied, including journal entries consistent with the intent of the account as outlined in this Report.

The actual cash payments would include all cash payments a utility makes for its pension and OPEB obligations. For pensions, the word "cash" refers to the funding contribution method.

Utilities who are members of OMERS do not need to post pension entries to the account. Utilities do not need to post OPEB entries if both the amount embedded in rates and recognized on the financial statements is based on the cash paid to beneficiaries for the period. This would likely be the case for smaller utilities with OPEB plans that are not material and therefore, do not warrant the cost of an actuarial valuation.

The account is to be used by utilities that are approved to recover their pension and OPEB costs on an accrual basis. Therefore, pension and/or OPEB entries will not need to be posted to the account if the OEB approves the cash method to recover these costs in a utility's rates.

A primary sub-account (as described) and a second, contra sub-account to enable book-keeping with offsetting entries must be established. When the cumulative accrual amount exceeds the cumulative cash payments, the primary account will hold a credit balance. When the cumulative cash payments exceed the cumulative accrual amount, the primary account will hold a debit balance. The primary account will accrue carrying charges to be returned to ratepayers when the cumulative opening monthly balance of the account is in a credit position. The contra account will not accrue carrying charges. The primary sub-account and contra sub-account are offsetting. Disposition can only result in a credit refund of carrying charges to ratepayers.

Effective the 1st of the month following the issuance of this Report, utilities will establish three sub-accounts:

- Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential
- Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account
- Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges

Electricity distributors and transmitters are to establish sub-accounts under Account 1522. Gas distributors are to establish sub-accounts under Account 179.

Separate monthly entries for pension and OPEBs are required to be recorded into the sub-accounts of the variance account. Entries will be based on the approved accrual amount embedded in rates (normally a forecast number) and the actual cash payments made. The OEB has determined that the actual cash payments (including any special payments for pensions), should be supported by an objective source such as an actuarial report or audited financial statements. The approved accrual amount embedded in rates is not expected to change or escalate during an IRM or Custom IR term expect in cases where in a Custom IR term, updated forecasts for subsequent years of the term were approved.

Carrying charges shall apply to the primary sub-account only (not the contra sub-account), calculated using simple interest applied to the monthly opening balances in the primary sub-account. The interest rate shall be the CWIP rate prescribed by the OEB.

Previously Approved Accounts: Accrual versus Cash Variances

For some utilities, the OEB approved the recovery of their pension and OPEB costs on a cash basis as an interim measure pending the outcome of this consultation, and directed them to establish a variance account(s) to capture the difference between the cash and accrual methods in order to keep the period open for final adjustments once the outcome of the consultation is known. These utilities are required to continue to record amounts into this account(s) until the effective date of the utility's next cost based rate order. Utilities will be expected to dispose of this account(s) at their next cost-based rate application through a separate rate rider, provided that the OEB approves rates using the accrual method.[9] Recoveries from this rate rider should be applied against the approved balance within this account(s) until the recovery period has expired. No carrying charges will apply on the existing account after disposition consistent with the OEB's approach to accounts that track non-cash items. Any residual balance within the account will not be subject to true-up.

As these utilities are collecting amounts from monthly rate riders relating to the previously approved account(s), they will also be required to record a corresponding monthly entry to the new Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential variance account. Generally, the disposition of the previously approved account balance will be a recovery from ratepayers (i.e. the previously approved account is in a debit position). Accordingly, a credit entry to the new Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential variance account will be made with an offsetting debit entry to the contra account on a monthly basis to capture the portion of the previously approved account balance that is now being collected from ratepayers.

Carrying charges will be required to apply against the net balance in the new variance account. The intent is that carrying charges on the previously approved account balance are calculated on the amounts as they are actually recovered from ratepayers on a month to month basis prospectively. Carrying charges will be applied asymmetrically as amounts are recorded in the new Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential variance account in accordance with the accounting treatment outlined for this variance account in the section above. These entries will be recorded simultaneously with the accounting requirements for the new variance account, as described in the section above.

[9] This will depend on the timing of a cost-based application (cost of service or Custom IR) and the availability of audited financial statements to support balances.

Appendix D: Journal Entries

The following is a simplified example that illustrates the accounting treatment for recording transactions in the sub-accounts of Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential Account. The specific accounting treatment that may apply to a distributor may vary depending on the specific circumstances of the distributor.

Assumptions:

- Pension and OPEB costs are approved for recovery on an accrual basis.
- In utility A's rate application, pension and OPEBs are forecasted to be $1,000 ($700 pension, $300 OPEBs) on an accrual basis and $700 ($500 pension, $200 OPEBs) on a cash basis as supported by the latest actuarial valuation for the test year (Year 1).
- Capitalized pension and OPEB amounts are assumed to be immaterial and therefore, have no impact on the differential calculation.
- After rates have been set and implemented, utility A receives an updated actuarial funding valuation during year 1 that changes the cash payment requirements for years 2 and 3 to $1,200 ($800 pension, $400 OPEBs) and $1,500 ($1,000 pension, $500 OPEBs), respectively. These are the actual amounts the utility pays in years 2 and 3. The utility's accrual versus cash payment differential for years 1 to 3 is summarized as follows:

	Year 1			Year 2			Year 3		
	Pension	**OPEB**	**Total**	**Pension**	**OPEB**	**Total**	**Pension**	**OPEB**	**Total**
Accrual in Rates	700	300	1000	700	300	1000	700	300	1000
Cash Payments Made	500	200	700	800	400	1200	1000	500	1500
Difference	-200	-100	-300	100	100	200	300	200	500
Cumulative Difference			-300			-100			400

- In its next rebasing application in year 6, utility A requests to dispose and refund the cumulative net carrying charge balance of $75 in the carrying charges sub-account. Disposition of this sub-account is approved.
- Assumes no previously approved variance account to capture the difference between the cash and accrual methods that the OEB approved for some utilities as an interim measure pending the outcome of this consultation. If such an account exists, utilities must follow the accounting treatment in Appendix C.

For illustrative purposes, the journal entries required to record the accrual versus cash differential amounts and corresponding carrying charges into the Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential sub-accounts are shown below only for years 1-3. Instead of the required monthly journal entries, the journal entries below are simplified to reflect the cumulative annual amounts that would be recorded in the accounts.

Also note the asymmetric nature of the carrying charges as shown in year 3, where no carrying charges have been calculated. Recording of carrying charges ceases once the balance within the Pension & OPEB Forecast Accrual versus Actual Cash Payment Differential sub-account is no longer in a credit position (i.e. once the cumulative cash payments equal or exceed the cumulative accrual amount).

Year 1

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account	200	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential		200
To record the difference between the total pension accrual amount approved in rates and the actual cash amount paid		
Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account	100	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential		100
To record the difference between the total OPEB accrual amount approved in rates and the actual cash amount paid		
Dr. Interest Expense	8	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges		8
To record carrying charges on the monthly opening cumulative credit balance in the primary account at the OEB prescribed CWIP rate		

Year 2

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	100	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Contra Account		100
To record the difference between the total pension accrual amount approved in rates and the actual cash amount paid		
Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	100	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account		100
To record the difference between the total OPEB accrual amount approved in rates and the actual cash amount paid		

Dr. Interest Expense	3	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges		3

To record carrying charges on the monthly opening cumulative credit balance in the primary account at the OEB prescribed CWIP rate

Year 3

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	300	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account		300

To record the difference between the total pension accrual amount approved in rates and the actual cash amount paid

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential	200	
Cr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Contra Account		200

To record the difference between the total OPEB accrual amount approved in rates and the actual cash amount paid

Disposition Year

Dr. P&OPEB Forecast Accrual versus Actual Cash Payment Differential Carrying Charges	75	
Cr. Disposition and Recovery/Refund of Regulatory Balances		75

To record the approved disposition of the cumulative carrying charges

RE_ another thought.pdf

From: Picard, Michel
To: Petsche, Nadine (TBS)
Subject: RE: another thought
Date: July 4, 2017 8:31:00 AM

Hi Nadine,

I believe so on the basis that the financial statements of the market accounts have included variance accounts approved by the OEB for a number of years before the market accounts were recognized in the IESO's financial statements. These variance accounts, which relate to the RRRP, RPP and OESP programs, met and continue to meet the recognition criteria in ASC 980.

In our view, should the IESO meet the GBE criteria or take the option offered to OGOs to use IFRS then IESO would be permitted to adopt IFRS 14 as it also meets the scope criteria in IFRS 14 paragraph 5 as follows:

"An entity is permitted to apply the requirements of this Standard in its first IFRS financial statements if and only if it:

(a) conducts rate-regulated activities; and

(b) recognised amounts that qualify as regulatory deferral account balances in its financial statements in accordance with its previous GAAP."

Regards,

Michel

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, June 30, 2017 5:56 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: another thought

If the IESO was not classified as a GBE, but decided to follow IFRS anyway, then IFRS 14 might be applicable? N

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Centre <http://pages.kpmgemail.com/page.aspx?QS=2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4> (http://subscribe.kpmg.ca <http://pages.kpmgemail.com/page.aspx?QS=2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4>).

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RE_ examples.pdf

From: Picard, Michel
To: Petsche, Nadine (TBS)
Subject: RE: examples
Date: July 24, 2017 2:08:00 PM

Hi Nadine,

I did a bit of Google and found this.

https://www.sec.gov/Archives/edgar/data/710182/000095012002000226/txu-form8k_0415.txt

https://www.sec.gov/Archives/edgar/data/1130310/000095012903003121/h06689exv99w2.htm

https://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.263/25.263.pdf

http://files.shareholder.com/downloads/HOU/0x0xS1130310-15-8/1130310/filing.pdf

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 5:48 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: examples

Perhaps, but I got the sense that this isn't as unique a type of transaction south of the border. I don't mean to make work for you. I know how busy you are, so if the info isn't readily available then it's all ok. Thanks and have a great weekend.

N

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July-21-17 5:46 PM
To: Petsche, Nadine (TBS)
Subject: RE: examples

LIPA is one example. Correct?

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 5:10 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: examples

During the IASB roundtable there was mention of examples where rate regulated assets had been commoditized, and that these sorts of transactions were more frequent in the US. Just wondering if you could advise on examples? Thanks.
Nadine

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: July-21-17 5:06 PM
To: Petsche, Nadine (TBS)
Subject: RE: examples

Not clear what this is.

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 1:15 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: examples

Michel,
Wondering if you have examples of commoditized RRAs (Canada and US).
Thx. n

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RE_ examples.pdf (2).pdf

From: Picard, Michel
To: Petsche, Nadine (TBS)
Subject: RE: examples
Date: July 21, 2017 5:46:28 PM

LIPA is one example. Correct?

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Friday, July 21, 2017 5:10 PM
To: Picard, Michel <mpicard@kpmg.ca>
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DUgcYQt40NF4dtg&s=vr2QWWchYcbEfIUQPH_iCVOwWo2qFtn7nCWyeXRbaj8&e=> (http://subscribe.kpmg.ca <https://urldefense.proofpoint.com/v2/url?u=http-3A__pages.kpmgemail.com_page.aspx-3FQS-3D2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4&d=DwMFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=Mr_2c2sT-yyaDYJh50Mnq0nNNj--DUgcYQt40NF4dtg&s=vr2QWWchYcbEfIUQPH_iCVOwWo2qFtn7nCWyeXRbaj8&e=>).

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RE_ house note changes 2.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Cc: Jordan Penic; Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: RE: house note changes
Date: September 1, 2017 1:00:43 PM
Attachments: image001.png

We are comfortable with the use of the language re OPA financial statements as an example of regulatory assets and market accounts have been previously in the provincial books. Want to ensure it is understood that the IESO's 2016 regulatory assets – smart meter and pension related, not an example within the OPA f/s

- 2016 is not the first year that amounts due to power generators have been included in the financial statements.
    - o IESO is the amalgamation of the former IESO and the Ontario Power Authority (OPA).
    - o OPA, when it was a standalone entity, prepared its financial statements in accordance with Public Sector Accounting Standards, and recognized on its financial statements, the amounts due to the power generators and the amounts due from the IESO. These financial statements were audited by a public accounting firm, and an unqualified opinion was issued. The inclusion of the amounts due to the power generators was not raised as a concern by the current auditor general in 2013-14 or 2014-15 or by previous auditors general in the years since the OPA was established in fiscal 2004-2005.
    - o OPA and IESO were amalgamated during 2015-16 and 2015-16 was the only year that balances related to a portion of the market accounts were not included in the province's consolidated financial statements.

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: August 31, 2017 3:29 PM
To: Kim Marshall
Cc: Jordan Penic; Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: RE: house note changes

Thanks Kim – the snapshot below is from KPMG's memo – issue 2, page 5 of 57 – it speaks to the other ISOs with respect to both the inclusion of market accounts and RR accounting -- Cindy

There are nine ISO entities in North America; seven in the U.S. and two in Canada (IESO and AESO). It is important to note that, similar to IESO, 7 of the 8 other ISO entities across North America are not-for-profit organizations (the 8th one is an LLC, non-stock company), 7 of the other 8 entities recognize the balances of the market participants and 6 of the other 8 entities recognize the economic effects of rate regulation (see Appendix D for a summary of these nine entities). All these entities state in the notes to their financial statements that their activities include the recovery of administrative fees for collecting amounts from the distributors of electricity and paying the contracts of the generators of electricity.

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: August 31, 2017 3:20 PM
To: Veinot, Cindy (TBS)
Cc: Jordan Penic
Subject: house note changes

Happy to discuss

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From: Jordan Penic
Sent: August 31, 2017 8:57 AM
To: Kim Marshall; Terry Young
Cc: Susan Nicholson
Subject: RE: Updated KMs and Q&As re: Accounting Changes

Kim,

Please find attached the TBS house book notes edited to reflect the messaging developed by the IESO. These notes get into more detail around accounting practices than ours, so let me know if I have misunderstood anything with my edits.

Cheers,

Jordan

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From: Kim Marshall
Sent: August 31, 2017 8:18 AM
To: Jordan Penic; Terry Young
Subject: RE: Updated KMs and Q&As re: Accounting Changes

I would like to share with kpmg as fyi, but am ok doing that after ministry. Provincial controller followed up wit me yesterday so whatever you need let me know, thx

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Sent: August 30, 2017 9:30 PM
To: Terry Young; Kim Marshall
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Kim – earlier today you mentioned there may be some next steps in regards to KPMG, I believe that Michael Boll had flagged that as well. Can you advise on whether we need to engage them on anything in this document?

If we've landed on our messages we can use them to update the TBS messages, which I can do first thing in the morning. I will also need to share the KM and Q&A with the Ministry tomorrow.

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image001_1.pdf

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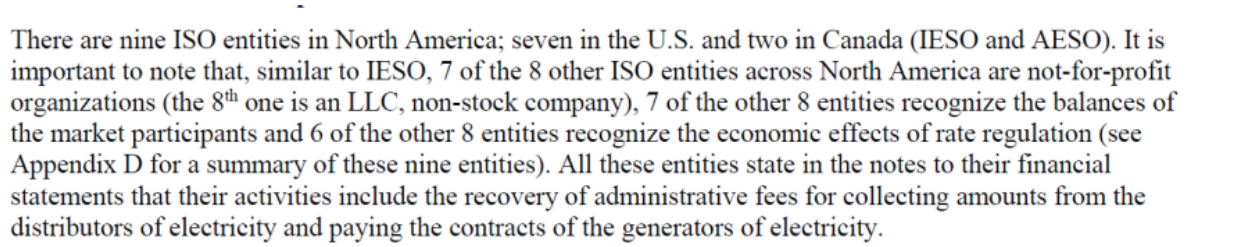

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RE_ psab response_ (2).pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Subject: RE: psab response?
Date: November 30, 2017 2:18:00 PM

Hi Kim -- I think it would be helpful for them to understand more about the RPP – the OEB's role in that process and how that continues, but is expanded to take into consideration the amount of the deferred payments from the ratepayers.

Cindy

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: November 30, 2017 8:05 AM
To: Veinot, Cindy (TBS)
Subject: psab response?

Here is what I am running by opg – any thoughts on approach before I do that? Need more detail on opg accounting or leave for another discussion ? Thx

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?

As per the legislation, OPG provides the clean energy adjustment recoverable for a specific period to the OEB who establishes the rate for specified consumers.

If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?

Parts of the legislation do apply to OPG. The IESO has the original right to recover from future rates. This creates the regulatory asset, like the fair hydro predecessor – RPP or . The IESO right to recover and any obligations will be transferred to the financing entity. While the financing entity is better able to speak to their accounting than I am, my understanding is they will have a variance account which will be consolidated into OPG and then the provincial books.

Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

The OFHPA legislation covers the OEB oversight. Note – can we be more specific here?

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Re_ A favour.pdf

From: Hosick, Sarah (TBS)
To: Kim Marshall; Veinot, Cindy (TBS)
Subject: Re: A favour
Date: October 14, 2017 11:12:23 AM
Attachments: Public Accounts Technical Briefing 201617_Final.pptx

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Hi kim

Please see attached for the deck that was used for the public accounts technical briefing in September (incl. the ieso piece)

Hope this helps!

Sarah

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Kim Marshall
Sent: Saturday, October 14, 2017 7:01 AM
To: Veinot, Cindy (TBS); Hosick, Sarah (TBS)
Subject: A favour

If either of you has access to the public accounts presentation pieces re ieso can you pls send to me, would like to use it as a model for technical briefing and am having vpn issues at home thx

Sent from my iPad
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Public Accounts Technical Briefing 201617_Fin.pdf

2016-17 Public Accounts

Technical Briefing

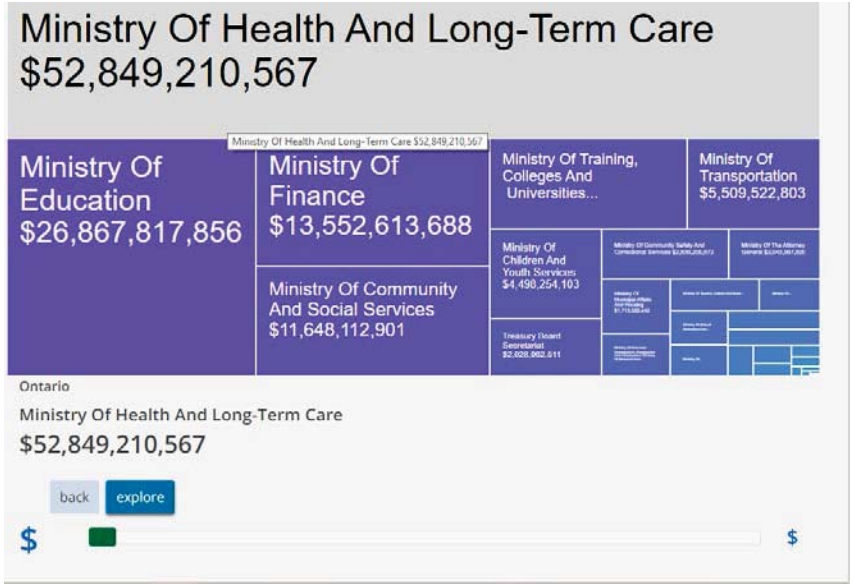
September 7, 2017

Purpose of today's briefing

1. Provide an overview of the results for fiscal 2016-17
2. Highlight the changes made in the 2016-17 financial statements:
   a) Classification of third-party revenues for hospitals, colleges and school boards
   b) Accounting basis for Ontario Power Generation and Hydro One
   c) Accounting for the Independent Electricity System Operator (IESO) and market accounts
   d) Accounting for net pension assets of jointly sponsored pension plans

2016-17 Highlights

- New digital tools have been developed that present the Public Accounts data in innovative, visual formats.
- This year, Ontario has:
  - Released six new downloadable data sets
  - Created new data visualizations tools
  - Published the web page under the Open Ontario Licence



Ontario

2016-17 Highlights

- Ontario has beaten its deficit target eight years in a row. The 2016-17 Public Accounts of Ontario show that Ontario's deficit is $1 billion - $3.3 billion lower than projected in the 2016 Ontario Budget.
- In the 2016-17 fiscal year (April to March):
  - revenue was $140.7 billion – $2.2 billion more than expected in the 2016 Budget
  - expenses were $141.7 billion – $0.1 billion less than planned in the 2016 Budget
  - Some of the top spending areas included

$56B Health

$26.6B Education

$12.9B Infrastructure

Ontario

2016-17 Highlights

Other highlights include:

- Ontario's real gross domestic product (GDP) was 2.7%, up from 2.2% in the 2016 Budget. Over the last three years, Ontario's GDP growth has outpaced that of all G7 countries.
- Net debt-to-GDP continues to be forecasted lower than expected for 2016-17 at 37.8%, an improvement over the 2016 Budget of 39.6%.

Visit **Ontario.ca/publicaccounts** for more highlights and digital tools that help make Ontario's finances easier to understand, access and use.

Summary 2016-17 Results

2016-17 Actual Results					
$ Billions	**2016-17 Budget[1]**	**2016-17 Actual**	**2015-16 Actual [1 2]**	**Change from Budget**	**% Change**
Revenues	138.5	**140.7**	136.1	2.2	1.6%
Expenses	141.8	**141.7**	139.7	(0.1)	-0.1%
Reserve	1.0	**-**	-	(1.0)	
Annual Deficit	(4.3)	**(1.0)**	(3.5)	3.3	-76.7%
Net Debt		**(301.6)**	(295.4)		
Accumulated Deficit		**(193.5)**	(192.0)		

[1] 2015-16 Actuals and 2016-17 Budget have been reclassified to reflect the change in presentation for third party revenues of hospitals, colleges and school boards (no change to deficit)

[2] 2015-16 Actual has been restated to reverse the impact of regulated accounting for pensions

Ontario

Preparation of the Financial Statements

- The consolidated financial statements are prepared by the Government of Ontario in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB).
- PSAB independently establishes accounting standards for the public sector in Canada.
- The objective of PSAB standards is to meet the needs of users of financial statements by providing the information needed for accountability and decision making.
- PSAB standards specify how transactions and other events are to be recognized, measured, presented and disclosed in a public sector entity's financial statements.
- PSAB recognizes that their standards cannot address every potential situation, and that it may be necessary to refer to other sources of guidance.
    - *No rule of general application can be phrased to suit all circumstances or combinations of circumstances that may arise. As a result, matters may arise that are not specifically addressed in the primary sources of GAAP. It is necessary to refer to other sources when the primary sources do not deal with the accounting and reporting in financial statements of transactions or events that a public sector reporting entity encounters, or when additional guidance is needed to apply a primary source to specific circumstances. (Section PS 1150.07 from the PSA Handbook)*

Accounting Changes for 2016-17

- The Province adopted several new accounting changes for the 2016-17 Public Accounts to better reflect the financial position and activities of the government during the fiscal year
- These changes included:
  a) Classification of third-party revenues for hospitals, colleges and school boards
  b) Accounting basis for Ontario Power Generation and Hydro One
  c) Accounting for the Independent Electricity System Operator (IESO) and market accounts
  d) Accounting for net pension assets of jointly sponsored pension plans

Classification of Third-Party Revenues for Hospitals, Colleges and School Boards

- 2016-17 Public Accounts present third-party revenues for hospitals, school boards and colleges with provincial revenue.
- In prior years, these revenues were netted against the expenses of the respective sectors (health, education, post-secondary).
- This is a change in presentation only.
- The changes increases total revenues and expenses by approximately $8 billion.
- There is no impact to the Province's deficit, net debt or accumulated deficit.
- This change is consistent with PSAB standards and the reporting practices of other senior Canadian governments.
- This change, supported by the Province's professional accounting staff, was recommended by the Office of the Auditor General in prior years.

Ontario

Accounting basis for Ontario Power Generation and Hydro One

- The 2016-17 Public Accounts include the financial results of Ontario Power Generation (OPG) and Hydro One using International Financial Reporting Standards (IFRS).
- These two government business enterprises currently report their stand-alone financial results using Generally Accepted Accounting Principles in the United States (US GAAP).
- In prior years, the reported results of OPG and Hydro One were included in the results of the Province based on US GAAP.
- This change does not have a material impact on this year's Public Accounts.
- This change, supported by the Province's professional accounting staff, was recommended by the Office of the Auditor General in prior years.

Ontario

Accounting for Independent Electricity System Operator (IESO) Market Accounts

- Independent Electricity System Operator (IESO) is a corporation established pursuant to Part II of the *Electricity Act, 1998*, and prepares its financial statements in accordance with PSAB standards.
- KPMG LLP audits IESO's financial statements and issued an unqualified opinion on the December 31, 2016 financial statements.
- IESO administers a $17 billion annual market reflecting the amounts *due to* entities that provide electricity to the market (e.g. power generators) and *due from* entities who consume electricity (e.g. local distribution companies on behalf of their consumers). IESO is a party to these agreements with the market participants.
- In 2016, IESO changed the accounting for the market accounts, recognizing these amounts due from and due to the market participants as assets and liabilities respectively.
- This change has no impact to the province's annual deficit, net debt or accumulated deficit.
- The Ontario Power Authority (which was merged with the IESO on January 1, 2015) included a segment of these accounts in its financial statements, and received an unqualified opinion by its external auditor, KPMG LLP. The financial statements of the Province were not qualified by the Office of the Auditor General as a result of including these accounts.

Ontario

Accounting for IESO Market Accounts

- The IESO is a party to agreements with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO. For example:
  - Ontario Power Generation has a receivable from IESO recorded on its financial statements related to power generated, and historically, IESO did not have a payable recorded to Ontario Power Generation – now it does
  - Hydro One has a payable to IESO recorded on its financial statements related to power purchases, and historically, IESO did not have a receivable recorded from Hydro One – now it does
- The amounts due from market participants meet the definition of an asset and the amounts due to market participants meet the definition of a liability under PSAB standards.
- In connection with this change, the accounting for eight other independent system operators in North America were reviewed, and all but one recognize market accounts in the financial statements.
- IESO management, their Audit Committee, their Board of Directors, their external auditor and the Office of the Provincial Controller support the change in accounting as being more transparent.
- A qualified opinion was issued by the Office of the Auditor General on the 2016-17 consolidated financial statements regarding the change in Independent Electricity System Operator's accounting for the "market accounts".

Accounting for Net Pension Assets of Jointly Sponsored Pension Plans

- Ontario Public Service Employee's Union Pension Plan (OPSEUPP) and Ontario Teachers' Pension Plan (OTPP) are jointly sponsored pension plans (JSPPs) where the Government of Ontario is a co-sponsor.
- The plans are funded on a 50/50 basis, co-managed by the sponsors, and decisions regarding benefits and contributions require negotiation and agreement between them.
  - On June 12, 2017, the co-sponsors of OTPP (Ontario Teachers Federation and the Government) announced a 1.1% reduction in contributions effective January 1, 2018
- Under PSAB standards, an asset arises when the government's total contributions to a plan, including interest earned thereon, are greater than the pension expense recognized since the start of the plan.
- Since 2001-02, the Province's share of pension assets reflected on the audited consolidated financial statements of the Province has been based on a policy considered to be consistent with PSAB standards related to accounting for retirement benefits. The standards have not changed since their issuance in 2001.
- In 2016, the government passed a time-limited regulation to require the full write-off of the net assets of both of these plans for the 2015-16 Public Accounts.

Ontario

Pension Accounting

- Based on professional staff's interpretation of PSAB standards, the government believes that pension assets for OPSEUPP and OTPP should be reported to fairly present the Province's financial position.
- The Province has shared control over the pension plan and the existing agreements in place between the sponsors support the recognition of the pension asset.
- The professional staff does not believe that the Government has the right to withdraw any surplus from the plan, and has supported the value of the pension asset solely on the basis of being able to reduce contributions in the future.
- The Province has recorded the pension assets for OTPP and OPSEUPP in its 2016-17 consolidated financial statements and has restated the 2015-16 consolidated financial statements to recognize the pension assets.
- With respect to the Healthcare of Ontario Pension Plan (HOOPP) and Colleges of Applied Arts and Technology Pension Plan (CAATPP), based on the difference in governance structures between these plans and OTPP and OPSEUPP, the Province has recorded a valuation allowance for CAATPP in the year (amount is not material). The HOOPP plan is not in a net asset position for accounting purposes at March 31, 2017. This treatment is consistent with the recommendations of the Pension Asset Expert Advisory Panel who issued a supplementary report on these plans in March 2017.

Pension Accounting

- The professional staff's interpretation of PSAB standards is supported by its own research and analysis as well as:
  - The report of the Pension Asset Expert Advisory Panel (https://www.ontario.ca/page/pension-asset-expert-advisory-panel-report) released on February 13, 2017 stating that the Government should record an asset for its share of the surplus reported in the accounting valuations for each plan and that no valuation allowance is required.
  - An opinion from Deloitte LLP on aspects of the Province's accounting as at March 31, 2016 for the OTPP, a summary of which is included in Appendix A. The opinion, which was dated October 2, 2016, concluded that it was permissible to recognize a pension asset under Canadian Public Sector Accounting Standards, even though the Province did not have under a unilateral right to reduce contributions.
  - Analysis completed by EY as to whether any valuation allowance is required to be recorded for OTPP or OPSEUPP as of March 31, 2017. EY confirmed no valuation allowance was required for either plan.
- A qualified opinion was issued by the Office of the Auditor General on the 2016-17 consolidated financial statements regarding the Province's accounting for the net pension assets of OTPP and OPSEUPP.

Appendix A – Deloitte Summary of Accounting Opinion Issued on Pension Accounting

Deloitte was engaged to provide a report ("Deloitte Report") on the application of accounting standards by the Ontario Treasury Board Secretariat. Our report, which was issued on October 2, 2016, was prepared under professional standards for such reports set out by CPA Canada.

The subject of this report was the application of Public Sector Accounting Standards (PSAS), as established by CPA Canada, in the recognition of a pension asset in the Province of Ontario's financial statements. Pension accounting is subject to professional judgement and interpretation, and involves significant accounting estimates. The Deloitte Report focused on a specific aspect of this complex area as it relates to the Province of Ontario's accounting for the Ontario Teachers' Pension Plan (OTPP).

OTPP is a pension plan that is jointly sponsored by the Ontario government (or the Province) and the Ontario Teachers' Federation (OTF). Based on the Province's application of PSAS, OTPP is in a plan surplus position. We accepted this aspect of the Province's application of PSAS as a matter of fact in developing our report.

The Deloitte Report addressed the question of whether it was possible to record a pension asset related to the plan surplus in the Province's financial statements, given that the plan is jointly sponsored. We concluded that, based on the information provided to us by the Province and our professional judgement, that it was permissible under PSAS to record a pension plan asset, even though the Province's ability to benefit from any plan surplus, through future contribution reductions for example, would need to be negotiated with and agreed between the Province and OTF.

It is to be noted that even if a pension asset is recorded, PSAS would also require that consideration should be given to limiting the recorded amount of this pension asset to an amount that would be less than the calculated amount of the pension surplus. The Deloitte Report did not express a view on whether any limit to the recorded amount of the asset is needed in the case of the Province's accounting for the pension asset related to OTPP. Therefore, our report did not express a view on the amount of the pension asset that should be recorded in the Province's financial statements as at March 31, 2016 or at any other date.

Appendix B: Panel Members

- Patricia O'Malley (Chair) – former Chair of Canadian Accounting Standards Board, former member of International Accounting Standards Board, Chair of the Canadian Actuarial Standards Oversight Council, former technical partner KPMG
- Murray Gold – Leading practitioner and senior pension and benefits partner at Koskie Minsky LLP
- Uros Karadzic – Pension actuary, member of the PSAB's Employment Benefit Taskforce, partner at EY
- Paul Martin – Comptroller with the Government of New Brunswick, member of the PSAB's Employment Benefit Taskforce and previously a partner with the national accounting firm of Grant Thornton LLP

Re_ Are you around_ (3).pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Subject: Re: Are you around?
Date: July 12, 2017 1:10:57 PM

At a meeting re the Provincial guarantee. Is there an accounting issue if you hold on to the regulatory asset for a few months? I know the desire is to move it to OPG at the end of each month, but is that necessary or just cleaner. I won't relay your reply to the group. Just want to check signals. My thought is that it would be cleaner but not necessary for accounting.

Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Kim Marshall
Sent: Wednesday, July 12, 2017 1:06 PM
To: Veinot, Cindy (TBS)
Subject: Re: Are you around?

On cell 4165457202

Sent from my iPhone

On Jul 12, 2017, at 12:47 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

Sent from my BlackBerry 10 smartphone on the Rogers network.

This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Re_ Deloitte Opinion (2).pdf

From: Picard, Michel
To: Veinot, Cindy (TBS)
Subject: Re: Deloitte Opinion
Date: July 26, 2017 6:15:42 PM

Is a debriefing following your meeting with the AG useful for me? Was it about my report?

Sent from my iPhone

> On Jul 26, 2017, at 18:14, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> OK. Thanks
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Picard, Michel
> Sent: Wednesday, July 26, 2017 4:14 PM
> To: Veinot, Cindy (TBS)
> Subject: Fwd: Deloitte Opinion
>
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> From: "Winton, Paul E" <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
> Date: July 26, 2017 at 16:13:19 EDT
> To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
> Subject: RE: Deloitte Opinion
>
> It can be shared within TBS on an as needed basis, but the full covering letter disclaimer and restrictions must be passed along to anyone within TBS that receives it.
>
> From: Picard, Michel
> Sent: Wednesday, July 26, 2017 4:12 PM
> To: Winton, Paul E <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
> Subject: Fwd: Deloitte Opinion
>
> See question
>
> Sent from my iPhone
>
> Begin forwarded message:
> From: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>
> Date: July 26, 2017 at 15:18:54 EDT
> To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
> Subject: Re: Deloitte Opinion
> Thanks Michel. Quick question for you. Is the Deloitte restriction re disclosure for Treasury Board as a ministry or me as an individual. In other words, do I need permission to share this letter with my Associate DM and DM?
>
> Thanks,
>
> Cindy
>
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>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Picard, Michel
> Sent: Wednesday, July 26, 2017 10:36 AM
> To: Veinot, Cindy (TBS)
> Subject: Deloitte Opinion
>
>
> Hi Cindy,
>
> Please find enclosed the Deloitte Opinion and our covering letter, which addresses the terms and conditions for the use of the Deloitte Opinion.
>
> Should you have any questions, please do not hesitate to contact me.
>
> Michel Picard, CPA, CA
>
> Partner, Accounting Advisory Services
>
> KPMG LLP
>
> 333 Bay Street, Suite 4600
> Toronto, Ontario, M5H 2S5
> T 416 777 8414
> M 416 560 2569
> mpicard@kpmg.ca<mailto:mpicard@kpmg.ca><mailto:mpicard@kpmg.ca>
> LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=cyGuqYyDx7vcC7pYxjOBM4GQsZfCdFvTyeS4zCbYpBw&s=X8Ga5JswZkcnAGrX1mMy-

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> This email was sent to you by KPMG<http://info.kpmg.ca/> (http://info.kpmg.ca<http://info.kpmg.ca/><https://urldefense.proofpoint.com/v2/url?u=http-3A__info.kpmg.ca-253chttp-3A_info.kpmg.ca_-253e&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=wJZPC0kIM1P-8L8G9RItBQUFXZlCGKGMMiia7M14r-k&s=nzblR93DBuPe3ZQ0tZmt_g7q7eHzyvL96lRNalkC834&e= >). To sign up to receive event invitations and other communications from us (we have some informative publications that may be of interest to you), or to stop receiving electronic messages sent by KPMG, visit the KPMG Online Subscription Centre<https://urldefense.proofpoint.com/v2/url?u=http-3A__pages.kpmgemail.com_page.aspx-3FQS-3D2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=cyGuqYyDx7vcC7pYxjOBM4GQsZfCdFvTyeS4zCbYpBw&s=_b5E5JfsOWTb0yEYMg26FS-wyoXIRVM3-Ovu0efGyd4&e=> (http://subscribe.kpmg.ca<http://subscribe.kpmg.ca><https://urldefense.proofpoint.com/v2/url?u=http-3A__pages.kpmgemail.com_page.aspx-3FQS-3D2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=cyGuqYyDx7vcC7pYxjOBM4GQsZfCdFvTyeS4zCbYpBw&s=_b5E5JfsOWTb0yEYMg26FS-wyoXIRVM3-Ovu0efGyd4&e=>).
>
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> At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.
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>
> Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
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>
> * Disclaimer concerning confidential and privileged information/unintended recipient<https://home.kpmg.com/ca/en/home/misc/disclaimer-confidential.html> (http://disclaimer.kpmg.ca<https://home.kpmg.com/ca/en/home/misc/disclaimer-confidential.html><https://urldefense.proofpoint.com/v2/url?u=http-3A__disclaimer.kpmg.ca-253chttps-3A_home.kpmg.com_ca_en_home_misc_disclaimer-2Dconfidential.html-253e&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=wJZPC0kIM1P-8L8G9RItBQUFXZlCGKGMMiia7M14r-k&s=6rsnsC2v_psk1YRf_idB93VkqrTVKImuDGK1h6hC1dE&e= >).
> * Disclaimer concerning tax advice<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html> (http://taxdisclaimer.kpmg.ca<https://home.kpmg.com/ca/en/home/misc/disclaimer-tax.html><https://urldefense.proofpoint.com/v2/url?u=http-3A__taxdisclaimer.kpmg.ca-253chttps-3A_home.kpmg.com_ca_en_home_misc_disclaimer-2Dtax.html-253e&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=wJZPC0kIM1P-8L8G9RItBQUFXZlCGKGMMiia7M14r-k&s=ZAw9sKW9QUnIPu3PfLptlRgdH3uxwPwzuSlMAyCcxNE&e= >).
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> If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.
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Re_ Deloitte Opinion (3).pdf

From: Veinot, Cindy (TBS)
To: Picard, Michel
Subject: Re: Deloitte Opinion
Date: July 26, 2017 9:10:51 PM

She did not raise it. Does she have the Deloitte opinion?

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
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>
> Michel Picard, CPA, CA
>
> Partner, Accounting Advisory Services
>
> KPMG LLP

>
> 333 Bay Street, Suite 4600
> Toronto, Ontario, M5H 2S5
> T 416 777 8414
> M 416 560 2569
> mpicard@kpmg.ca<mailto:mpicard@kpmg.ca><mailto:mpicard@kpmg.ca>
> LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=cyGuqYyDx7vcC7pYxjOBM4GQsZfCdFvTyeS4zCbYpBw&s=X8Ga5JswZkcnAGrX1mMy-xKRevzH5hu-96mASLSSj2U&e=>
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> ---
>

Re_ Deloitte Opinion (4).pdf

From: Veinot, Cindy (TBS)
To: Picard, Michel
Subject: Re: Deloitte Opinion
Date: July 26, 2017 6:14:10 PM

OK. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Picard, Michel
Sent: Wednesday, July 26, 2017 4:14 PM
To: Veinot, Cindy (TBS)
Subject: Fwd: Deloitte Opinion

Sent from my iPhone

Begin forwarded message:

From: "Winton, Paul E" <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
Date: July 26, 2017 at 16:13:19 EDT
To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: RE: Deloitte Opinion

It can be shared within TBS on an as needed basis, but the full covering letter disclaimer and restrictions must be passed along to anyone within TBS that receives it.

From: Picard, Michel
Sent: Wednesday, July 26, 2017 4:12 PM
To: Winton, Paul E <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
Subject: Fwd: Deloitte Opinion

See question

Sent from my iPhone

Begin forwarded message:
From: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>
Date: July 26, 2017 at 15:18:54 EDT
To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: Re: Deloitte Opinion
Thanks Michel. Quick question for you. Is the Deloitte restriction re disclosure for Treasury Board as a ministry or me as an individual. In other words, do I need permission to share this letter with my Associate DM and DM?

Thanks,

Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Picard, Michel
Sent: Wednesday, July 26, 2017 10:36 AM
To: Veinot, Cindy (TBS)
Subject: Deloitte Opinion

Hi Cindy,

Please find enclosed the Deloitte Opinion and our covering letter, which addresses the terms and conditions for the use of the Deloitte Opinion.

Should you have any questions, please do not hesitate to contact me.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca><mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwIFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=cyGuqYyDx7vcC7pYxjOBM4GQsZfCdFvTyeS4zCbYpBw&s=X8Ga5JswZkcnAGrX1mMy-xKRevzH5hu-96mASLSSj2U&e= >

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Re_ Deloitte Opinion (5).pdf

From: Veinot, Cindy (TBS)
To: Picard, Michel
Subject: Re: Deloitte Opinion
Date: July 26, 2017 3:18:56 PM

Thanks Michel. Quick question for you. Is the Deloitte restriction re disclosure for Treasury Board as a ministry or me as an individual. In other words, do I need permission to share this letter with my Associate DM and DM?

Thanks,

Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Picard, Michel
Sent: Wednesday, July 26, 2017 10:36 AM
To: Veinot, Cindy (TBS)
Subject: Deloitte Opinion

Hi Cindy,

Please find enclosed the Deloitte Opinion and our covering letter, which addresses the terms and conditions for the use of the Deloitte Opinion.

Should you have any questions, please do not hesitate to contact me.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca
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Re_ Deloitte Opinion.pdf

From: Picard, Michel
To: Veinot, Cindy (TBS)
Subject: Re: Deloitte Opinion
Date: July 26, 2017 9:26:05 PM

Yes

Sent from my iPhone

> On Jul 26, 2017, at 21:10, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> She did not raise it. Does she have the Deloitte opinion?
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Picard, Michel
> Sent: Wednesday, July 26, 2017 6:15 PM
> To: Veinot, Cindy (TBS)
> Subject: Re: Deloitte Opinion
>
>
> Is a debriefing following your meeting with the AG useful for me? Was it about my report?
>
> Sent from my iPhone
>
>> On Jul 26, 2017, at 18:14, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>>
>> OK. Thanks
>>
>> Sent from my BlackBerry 10 smartphone on the Rogers network.
>> Original Message
>> From: Picard, Michel
>> Sent: Wednesday, July 26, 2017 4:14 PM
>> To: Veinot, Cindy (TBS)
>> Subject: Fwd: Deloitte Opinion
>>
>>
>> Sent from my iPhone
>>
>> Begin forwarded message:
>>
>> From: "Winton, Paul E" <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
>> Date: July 26, 2017 at 16:13:19 EDT
>> To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
>> Subject: RE: Deloitte Opinion
>>
>> It can be shared within TBS on an as needed basis, but the full covering letter disclaimer and restrictions must be passed along to anyone within TBS that receives it.
>>
>> From: Picard, Michel
>> Sent: Wednesday, July 26, 2017 4:12 PM
>> To: Winton, Paul E <pwinton@kpmg.ca<mailto:pwinton@kpmg.ca>>
>> Subject: Fwd: Deloitte Opinion
>>
>> See question
>>
>> Sent from my iPhone
>>
>> Begin forwarded message:
>> From: "Veinot, Cindy (TBS)" <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>
>> Date: July 26, 2017 at 15:18:54 EDT
>> To: "Picard, Michel" <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
>> Subject: Re: Deloitte Opinion
>> Thanks Michel. Quick question for you. Is the Deloitte restriction re disclosure for Treasury Board as a ministry or me as an individual. In other words, do I need permission to share this letter with my Associate DM and DM?
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>> Thanks,
>>
>> Cindy
>>
>>
>>
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>> From: Picard, Michel
>> Sent: Wednesday, July 26, 2017 10:36 AM
>> To: Veinot, Cindy (TBS)
>> Subject: Deloitte Opinion
>>
>>
>> Hi Cindy,
>>
>> Please find enclosed the Deloitte Opinion and our covering letter, which addresses the terms and conditions for the use of the Deloitte Opinion.
>>
>> Should you have any questions, please do not hesitate to contact me.

>>
>> Michel Picard, CPA, CA
>>
>> Partner, Accounting Advisory Services
>>
>> KPMG LLP
>>
>> 333 Bay Street, Suite 4600
>> Toronto, Ontario, M5H 2S5
>> T 416 777 8414
>> M 416 560 2569
>> mpicard@kpmg.ca<mailto:mpicard@kpmg.ca><mailto:mpicard@kpmg.ca>
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Re_ EXTERNAL Statement re_ accounting implications of provincial guarantee 2.pdf

From: Kim Marshall
To: HARTWICK Ken -FINANCE
Cc: Veinot, Cindy (TBS); Hosick, Sarah (TBS); LEE John -TREASURY; MAUTI John -FIN & C CTRL
Subject: Re: EXTERNAL – Statement re: accounting implications of provincial guarantee
Date: September 21, 2017 2:33:42 PM

The IESO has reviewed the draft term sheet in conjunction with KPMG and do not see any accounting implications for the IESO.

Sent from my iPad

On Sep 21, 2017, at 12:16 PM, HARTWICK Ken -FINANCE <ken.hartwick@opg.com> wrote:

Cindy

We have informally reviewed with EY the concepts from an earlier version of the draft Change of Law Protection Term Sheet which we also provided comments on back to the Province. We believe that the term sheet itself as currently drafted, will not cause an accounting issue but the final agreement could if the "obligor approval" is extended beyond what EY deems to be appropriate provincial oversight. Please note also that EY has already indicated that they will not sign off on their consolidation conclusion until all key agreements are "close to final" because provincial oversight needs to be assessed as a whole and not on an individual agreement basis. They still have concerns about the treatment of interest payments during the moratorium period and the last draft of the province's regulations dealing with management fees, and OEB involvement as these are all still outstanding issues.

I want to ensure that the next version of each of the documents that is reviewed with EY has limited scope to change as we have been substantively changing documents which is leading to questions on the likelihood of final agreements no longer meeting the objectives of OPG and then EY.

Thanks

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Wednesday, September 20, 2017 9:08 AM
To: HARTWICK Ken -FINANCE <ken.hartwick@opg.com>; Kim Marshall <Kim.Marshall@ieso.ca>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Subject: EXTERNAL – Statement re: accounting implications of provincial guarantee

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_____

Hi Ken and Kim,

As you may know, the provincial guarantee (now called Provincial Protection and Assurances Agreement) is tracking to Treasury Board on Monday (September 25) for approval. Given you won't have an updated opinion from KPMG at that time nor an updated letter from EY incorporating the impact of this agreement, the request has been made for each of IESO and OPG to confirm back from an accounting perspective the analysis completed with the respective auditor and a comment on the impact, if any, of this agreement on the accounting by your respective organizations on the Fair Hydro Plan.

Can you let me know if that is doable and send through your comments by EOD tomorrow?

Thanks,

Cindy

_____

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Re_ FHP Nov 21_cv review_v2 8 pm.pptx (3).pdf

From: Picard, Michel
To: Veinot, Cindy (TBS)
Subject: Re: FHP Nov 21_cv review_v2 8 pm.pptx
Date: November 20, 2017 8:33:42 PM

Thanks

Sent from my iPhone

> On Nov 20, 2017, at 20:06, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:
>
> Hi Michel and Kim – attached is the current version of the deck. There may be some minor tweaks to this, but it is substantially complete. If you review and notice anything that should be changed, please reply to all and we'll make the change in the morning before the meeting.
>
> Thanks all,
>
> Cindy
> <FHP Nov 21_cv review_v2 8 pm.pptx>

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Re_ Fair Hydro Plan Question.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS); Anthony Martinello; lubna.ladak@opg.com
Subject: Re: Fair Hydro Plan Question
Date: March 28, 2018 9:09:19 AM

I think we would have to ask fair hydro trust the carrying costs question. I am copying Anthony and Lubna for assistance

Sent from my iPad

On Mar 28, 2018, at 9:06 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

Hi Kim -- can you send me the expected amount of regulatory asset that will be recorded/sold to OPG Trust each year for the next three years. I'm looking to quantify what the AG will say our deficit is in each of the next three years. I have a schedule that shows the difference between the amount paid to the generator and the amount collected from customers (which is about $2.2B next year), but I'm assuming that doesn't include the interest paid to OPG Trust during those years.

Thanks,

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Re_ IESO - Follow up question (2).pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: Re: IESO - Follow up question
Date: November 28, 2017 2:43:30 PM
Attachments: image002.jpg
image004.jpg

Will include OPG

Sent from my iPhone

On Nov 28, 2017, at 1:30 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim – can you take a first crack these questions?
>
> ---
>
> **From:** Umar Saeed [mailto:usaeed@psabcanada.ca]
> **Sent:** November 28, 2017 11:12 AM
> **To:** Veinot, Cindy (TBS); Kim.Marshall@ieso.ca
> **Cc:** Michael Puskaric
> **Subject:** IESO - Follow up question
>
> Dear Kim and Cindy,
>
> We wanted to thank you again for your time the other day. I am going through my notes and I had a few questions for clarification.
> I suspect these will be fairly straightforward for you to answer, but I also want to be respectful of your time and if they are too complicated – please let me know.
>
> Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?
> If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?
> Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?
>
> I want to ensure I am understanding the process for recovering costs through future rates and the role of the OEB, OFHPA accurately.
> I know this is a busy time for both of you and your help is very much appreciated.
>
> Sincerely,
> Umar
>
> **Umar Saeed, MAcc, CPA, CA**
> Principal / Directeur de projets
> Public Sector Accounting Board / Conseil sur la comptabilité dans le secteur public
> Tel / Tél. : 416.204.3462
> usaeed@psabcanada.ca
> **| www.frascanada.ca | LinkedIn | @FRASCanada |**
>
> <image002.jpg> <image004.jpg>

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image002_1.pdf

PSAB
Public Sector
Accounting Board

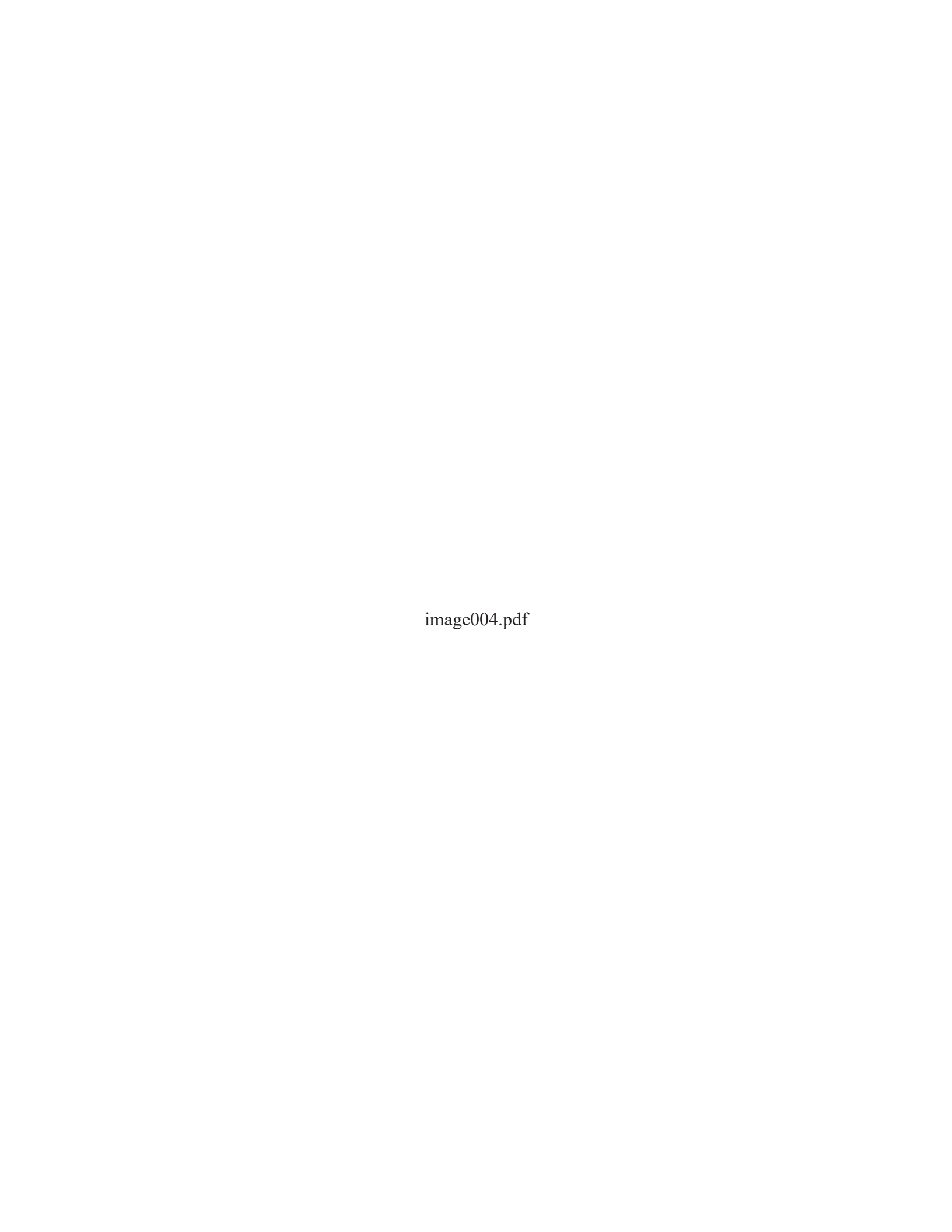
image004.pdf

CCSP
Conseil sur la comptabilité
dans le secteur public

Re_ IESO - Follow up question 3.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: Re: IESO - Follow up question
Date: November 28, 2017 2:43:30 PM

Will include OPG

Sent from my iPhone

On Nov 28, 2017, at 1:30 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim – can you take a first crack these questions?
>
> ---
>
> **From:** Umar Saeed [mailto:usaeed@psabcanada.ca]
> **Sent:** November 28, 2017 11:12 AM
> **To:** Veinot, Cindy (TBS); Kim.Marshall@ieso.ca
> **Cc:** Michael Puskaric
> **Subject:** IESO - Follow up question
>
> Dear Kim and Cindy,
>
> We wanted to thank you again for your time the other day. I am going through my notes and I had a few questions for clarification.
> I suspect these will be fairly straightforward for you to answer, but I also want to be respectful of your time and if they are too complicated – please let me know.
>
> Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?
> If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?
> Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?
>
> I want to ensure I am understanding the process for recovering costs through future rates and the role of the OEB, OFHPA accurately.
> I know this is a busy time for both of you and your help is very much appreciated.
>
> Sincerely,
> Umar
>
> **Umar Saeed, MAcc, CPA, CA**
> Principal / Directeur de projets
> Public Sector Accounting Board / Conseil sur la comptabilité dans le secteur public
> Tel / Tél. : 416.204.3462
> usaeed@psabcanada.ca
> **| www.frascanada.ca | LinkedIn | @FRASCanada |**
>
> <image002.jpg> <image004.jpg>

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Re_ IESO-KPMG indemnity letter.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Subject: Re: IESO-KPMG indemnity letter
Date: August 30, 2017 9:18:42 AM

I will take a look at this.

Did you have a chance to review the house book note on the IESO market accounts?

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Kim Marshall
Sent: Wednesday, August 30, 2017 7:59 AM
To: Veinot, Cindy (TBS)
Subject: FW: IESO-KPMG indemnity letter

I can sign IESO – mirrors language already in our contract with KPMG – what do you think about the other for you and kpmg?

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: August 29, 2017 4:14 PM
To: Kim Marshall
Cc: Michael Boll
Subject: RE: IESO-KPMG indemnity letter

Kim,

Please find enclosed the draft letters for your review and signature.

Regards,

Michel

> **From:** Picard, Michel
> **Sent:** Tuesday, August 29, 2017 3:40 PM
> **To:** 'Kim Marshall' <Kim.Marshall@ieso.ca>
> **Cc:** Michael Boll <Michael.Boll@ieso.ca>
> **Subject:** RE: IESO-KPMG indemnity letter

Will provide updated letters soon…

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Tuesday, August 29, 2017 11:16 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: Re: IESO-KPMG indemnity letter

Could we use the same letter with a revised first sentence reference to document(s)

Sent from my iPad

On Aug 29, 2017, at 8:44 AM, Picard, Michel <mpicard@kpmg.ca> wrote:

> Hi Kim,
>
> It does not. It is a different document.
>
> Michel

From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: Tuesday, August 29, 2017 7:40 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: IESO-KPMG indemnity letter

Michel, attached is the indemnity letter previously signed by IESO and KPMG. We believe this covers the release of the KPMG material to E&Y – agreed thanks

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 18, 2017 9:03 AM
To: Bruce Campbell
Cc: Michael Boll; Kim Marshall
Subject: RE: Final letter

All,

Please find enclosed the signed indemnity letter.

Regards,

Michel

From: Bruce Campbell [mailto:bruce.campbell@ieso.ca]
Sent: Thursday, May 18, 2017 8:20 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>; Bruce Campbell <bruce.campbell@ieso.ca>
Subject: RE: Final letter

Mr. Picard – attached is the signed letter. Can you please fully execute and return a copy to us.
Thank you,
Lorraine Turnevicius
For Bruce Campbell

Lorraine Turnevicius | Executive Assistant
Independent Electricity System Operator (IESO) | T: (416) 506-2835
120 Adelaide Street West, Suite 1600, Toronto, ON, M5H 1T1
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

---

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 17, 2017 5:36 PM
To: Bruce Campbell
Cc: Michael Boll; Kim Marshall
Subject: RE: Final letter

Thanks Bruce.

As agreed over the phone, you can release the report to the Ministry on the provisio that you sign tomorrow the EL as provided to you a few minutes ago, a copy of which is attached.

Good evening,

Michel

From: Bruce Campbell [mailto:bruce.campbell@ieso.ca]
Sent: Wednesday, May 17, 2017 5:30 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: FW: Final letter

Thank you Michel – as discussed we will be sending the material to the Ministry now – we will get you a signed copy in the morning.
Bruce

Bruce Campbell | President & CEO
Independent Electricity System Operator (IESO) | T: (416) 506-2829 | C: (416) 528-3685
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO
Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: May 17, 2017 5:15 PM
To: Bruce Campbell
Subject: Final letter

Bruce,

Please find enclosed the final indemnity letter. We have accepted your last suggestion.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca
LinkedIn

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Re_ Market accounts HBN - August 23 2017 v1 (2).pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall
Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: Re: Market accounts HBN - August 23 2017 v1
Date: August 25, 2017 8:25:44 AM

Noon is fine

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Kim Marshall
Sent: Friday, August 25, 2017 7:22 AM
To: Veinot, Cindy (TBS)
Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: Re: Market accounts HBN - August 23 2017 v1

when do you need comments back from us? is mon ok?

I will have to look but off the top of my head I wonder if 2014 was the winter of the polar vortex (very cold) and limited gas availability resulting in high hoep? Global adjustment is the difference between contract price and HOEP the hourly electricity dispatch price set by the market.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Sent: August 24, 2017 7:09 PM
To: Kim Marshall
Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: Market accounts HBN - August 23 2017 v1

Hi Kim – Attached is a house book note for the market accounts – there is one question for you in there re: describing IESO's role with the LDCs (I took the description for the role with the generators from KPMG's memo, but didn't see a similar one for LDCs).

Also – Bharat is going to reach out to Susan or yourself re: why the amounts owed to the generators in 2014 in the OPA f/s (less than $500M) are so much lower than the balances at the end of March 2017 ($1.6 billion) – are we comparing apples to oranges?

Thanks,

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Re_ Quick Question.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Cc: Susan Nicholson
Subject: Re: Quick Question
Date: August 9, 2017 11:33:29 AM

Don't think we did if not in email attachments

Sent from my iPhone

On Aug 9, 2017, at 11:28 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

Hi Kim and Susan – do you have a summary of the interactions with the AG on the FHP – specifically, I'm looking for the date the cabinet submission from March 1 was provided to the AG.

Thanks,

Cindy

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Re_ Timeline of Meetings on Fair Hydro Plan (1).pdf

From: Kim Marshall
To: Hosick, Sarah (TBS)
Cc: Jordan Penic; Lorraine Turnevicius
Subject: Re: Timeline of Meetings on Fair Hydro Plan
Date: August 24, 2017 10:15:49 AM

I am copying Lorraine who has access to calendars and can provide ceo phone call or meeting times with the AG, thanks

Sent from my iPad

On Aug 24, 2017, at 9:23 AM, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca> wrote:

> Thanks Kim, this is very helpful!
>
> If you have any phone call dates that would also help, trying to put together the comprehensive picture best we can. I've also already reached out to Michel at KPMG, and as well as OPG, Energy, OFA, MOF, etc.
>
> Thanks,
> Sarah
>
> ---
>
> **From:** Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> **Sent:** August 24, 2017 7:55 AM
> **To:** Hosick, Sarah (TBS)
> **Cc:** Jordan Penic
> **Subject:** RE: Timeline of Meetings on Fair Hydro Plan
>
> Attached is a summary given to our board to June 20 that encompasses more than AG meetings but can help. In addition here are subsequent AG meetings…
>
> June 27th – AG, Barry Neilson met with Bruce Campbell and myself
> June 28th – I believe she met or spoke with peter Gregg
> July 25th the AG and Barry attended a meeting of the board of directors as an observer
>
> I know there are phone calls that I may not have a record of with the Chair current CEO and former CEO. Do you need that as well? Are you reaching out to KPMG separately? I know she met last Thursday with John Gordon and Michel Picard. Jordan just copying you as another pair of eyes. Thx

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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---

From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: August 23, 2017 5:26 PM
To: Kim Marshall
Subject: Timeline of Meetings on Fair Hydro Plan

Hi Kim,

In preparation for the upcoming Public Accounts release, we are putting together backpocket timeline of meetings/calls with government and AG on the Fair Hydro Plan.

Would you be able to send me a list of meeting dates and if any other organizations were present, that IESO (or the IESO board) had with the AG on this topic?

I'm hoping to pull together a consolidated list by end of the week, let me know if this is possible on your end.

Happy to discuss if any questions.

Thanks,
Sarah

Sarah Hosick
Executive Assistant & Special Policy Advisor (A)
Assistant Deputy Minister's Office | Office of the Provincial Controller
Office of the Treasury Board | Treasury Board Secretariat
7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7
416-212-8512

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Re_ Updated Public Accounts Technical Briefing .pdf

From: Kim Marshall
To: Hosick, Sarah (TBS)
Cc: Donaldson, Mark (TBS); Veinot, Cindy (TBS)
Subject: Re: Updated Public Accounts Technical Briefing
Date: September 4, 2017 5:36:14 PM

---

agreements plural

From: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>
Sent: September 1, 2017 5:13 PM
To: Kim Marshall
Cc: Donaldson, Mark (TBS); Veinot, Cindy (TBS)
Subject: Updated Public Accounts Technical Briefing

Hi Kim

Please see attached for an updated technical briefing deck that incorporates the comments from the call today, as well as some edits from our communications branch.

One point I'd like to clarify with you, on slide 12 should it read "IESO is a party to agreements" plural or should it read "IESO is party to an agreement" singular?

Pw to follow in separate email. Happy to take any other comments as well.

Have a good long weekend!

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

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Regroup on FAP.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Regroup on FAP
Date: Wednesday, April 12, 2017 18:02:54
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201705164900505~20170412220255000~Z~108E13BA29DAEC6F648BCE1CD3512C21
View the original item

Suzie/Lee Anne,

We will be scheduling a call for tomorrow afternoon at 3 pm to regroup on the FAP file.

I’ll send out the invite shortly.

Thanks.

Nadine

From: Suzie Gignac [mailto:
Attachments:
image001.gif (8 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201705164900505~20170412220255000~Z~108E13BA29DAEC6F648BCE1CD3512C21&AttachmentId=1image001.gif

Regroup on FAP.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Regroup on FAP
Date: Wednesday, April 12, 2017 18:02:54
Attachment 1: image001.gif

Suzie/Lee Anne,

We will be scheduling a call for tomorrow afternoon at 3 pm to regroup on the FAP file.

I'll send out the invite shortly.

Thanks.

Nadine

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April-12-17 9:47 AM
To: Petsche, Nadine (TBS); Blake Langill; Lee Anne Probert
Cc: Hosick, Sarah (TBS); Veinot, Cindy (TBS)
Subject: RE: Request for feedback (time sensitive)

Hi Nadine:

We are looking at the document and have had a high level discussion of possible issues and wondering if you have time for a call to give you our initial thoughts at 1pm today?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Tuesday, April 11, 2017 1:23 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: Request for feedback (time sensitive)
Importance: High

Suzie/Blake/LeeAnne,

Further to our discussion on Friday, we have received the updated draft Legislation for the Fair Hydro Act. It will continue to evolve, but is on a tight timeline, so we would appreciate your feedback on the currently envisioned model and any potential accounting risks from your perspective.

An important regroup of key stakeholders is planned for tomorrow afternoon, so if we can get your comments (concerns mainly) by tomorrow am it would be greatly appreciated.

Please direct your comments to both Cindy and myself.

Thanks.

Nadine

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image001.pdf

Regroup on Fair Allocation Plan (OPCD, EY).rtf

From: Petsche, Nadine (TBS) []
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Regroup on Fair Allocation Plan (OPCD, EY)
Date: Wednesday, April 12, 2017 18:05:39

Teleconference details:

Time – 3:00pm – 4:00pm (Eastern Standard Time)
Telephone number – 416-212-8014 (local) or 866-500-5845 (toll free)
Participant code – 1474532

Request for Advice .rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Request for Advice
Date: Monday, April 03, 2017 10:40:09
Attachment 1: CBN - Electricity Price Mitigation.pdf
Attachment 2: Rate Mitigation (ENERGY) - Appendix - Cabinet - March 1 2017.pdf
Attachment 3: EY request GAM Apr3 .docx

Good morning LeeAnne.

Please find attached a completed template reflecting a time-sensitive advisory request (related to the government's electricity price mitigation initiatives), including documents which provide additional context and direction.

I would like to arrange for a short call to review the request, today if possible. I anticipate that you may want to include others on this particular assignment based on your assessment of the experience/skills required.

I'll look forward to our chat.

Regards,

Nadine

CBN - Electricity Price Mitigation.pdf

Ontario

CABINET BRIEFING NOTE

Energy

Electricity Price Mitigation

Cabinet (info) Feb 15, 2017	TB/MBC Mar 1, 2017	Cabinet Mar 1, 2017	Announcement Mar 2017	LRC / Cabinet Spring 2017	Introduction Spring 2017	Effective Date July 1, 2017

This government's commitment	"We're going to come out with what we can do [on hydro bills] before the budget," – Premier Wynne, Jan 18, 2017 "And that's why … I've committed to finding more ways to lower rates, to reduce the burden on consumers, and we're going to be working on that in the weeks and the months ahead. And, in fact, that work is well underway. I'm listening to the people of the province. I'm listening to the people who run our system. And I am going to make changes because it's the right thing to do." – Premier Wynne, speech at Economic Club of Canada, Jan 19, 2017

SUMMARY OF PROPOSAL

Note: this note is based on a draft submission

The Ministry of Energy is seeking approval to implement electricity price mitigation initiatives that would provide additional rate relief to Ontario electricity ratepayers. While the actual benefits would be variable based on consumer class and consumption, the proposal is projected to provide about 25% in rate relief (including the 8% announced in 2016) for a typical residential consumer (i.e., based on a Toronto Hydro customer consuming 750kWh per month in 2017).

The proposal aims to smooth the impacts of the Global Adjustment (GA), help the most vulnerable Ontarians through enhancements to electricity support programs through tax-base funding and work to bend the future cost curve of electricity. Initiatives for approval include:

1. Subject to legal, accounting and financial risk assessments, financing a portion of the GA costs in order to reduce costs for ratepayers in the near term and spread the impacts of the GA across ratepayers over a longer period of time, specifically by:

- subsidizing rates in the short term, i.e. by reducing projected after-tax electricity costs for a typical customer consuming 750kWh per month in 2017 by up to $26/month
- bill increases will be kept in line with the Consumer Price Index (CPI) until the end of 2021
- from 2022 onwards, bills will increase at a rate that ensures recovery of the accumulated debt, interest costs and administrative costs by 2048 without exceeding around 10% of total electricity costs.

2. Subject to legal, accounting and financial risk assessment, expanding the powers of Ontario Power Generation (OPG), the Ontario Energy Board (OEB), and the Independent Electricity System Operator (IESO), and using other mechanisms, including putting in place appropriate payment, settlement and cost-recovery authorities for and through the IESO (including accommodating payments to and from any appropriate entity) to manage the deferred GA costs.

3. Lowering the Industrial Conservation Initiative (ICI) threshold to provide additional rate mitigation targeted at specific Class B electricity consumers groups (e.g. manufacturing), in particular manufacturing companies, with additional flexibility to encourage take-up, and explore additional rate mitigation residential tenants that are not sub-metered and report back to Cabinet and TB/MBC with options in winter 2017.
4. Enhancing electricity support and conservation programs and shifting the costs of those programs from rate payer funded to government funded:
   - Broadening the Rural or Remote Electricity Rate Protection (RRRP), including harmonizing distribution cost for customers with the highest distribution rates;
   - Expanding the Ontario Electricity Support Program (OESP);
   - Establishing a new one-time Affordability Fund in 2016/17; and
   - Eliminating the delivery charge for First Nations customers on reserve.
5. Ongoing activities to bend the future cost curve of electricity:
   - Ontario Energy Board (OEB) – Identify opportunities for OEB red-tape reduction and future LDC efficiencies and rates.
   - Independent Electricity System Operator (IESO) – Modernize Ontario's electricity market through electricity Market Renewal initiatives.
   - Explore additional cost savings to future electricity rates as part of the 2017 Long-Term Energy Plan to help offset the impact of GA recoveries.

The proposal will require a number of legislative, regulatory and policy changes, while working to maintain existing public policy objectives such as: maintaining a reliable electricity system, Ontario's commitment to reducing the impacts of climate change and commitment to achieve greenhouse gas (GHG) reduction targets.

The GA refinancing proposal includes policy approval to amend the legislated authority of OPG and IESO to enable appropriate cost recovery and settlement mechanisms, and of the OEB to ensure appropriate regulatory oversight.

In order to avoid the cost of GA refinancing impacting the province's fiscal plan, the proposed mechanism to partially defer the GA costs must meet legal, accounting, and financing requirements. This analysis will not be completed until the proposed legislation is finalized. If these requirements cannot be met, the cost of the GA refinancing would come onto the province's fiscal plan, creating a fiscal exposure of about $2.5 billion in 2017/18 and increasing in subsequent years (see table on p. 4). If GA refinancing is included in an announcement prior to confirmation of these requirements, the government would not be able to comment on the impact on the fiscal plan. Rather, the government could explain its intention to draft legislation to ensure legal, accounting and financial requirements are met so not to have a fiscal impact.

Terms you need to know

- **Global Adjustment (GA) –** Amount that accounts for differences between the market price of electricity and rates paid to regulated and contracted generators and for conservation programs. The GA is collected from all electricity ratepayers in Ontario.
- **Local Distribution Companies (LDCs) –** Local electricity utilities, responsible for distributing power from transmission lines to people's homes (e.g., Hydro Ottawa, Toronto Hydro, etc.)
- **Delivery charge –** The costs of getting electricity from generating stations to homes and businesses. Appears as one line on electricity bills, includes three components:
  - Transmission: The costs of moving electricity across high voltage lines from generating stations to the distribution system. This cost is recovered through a variable charge that is approved by the OEB.
  - Distribution: The costs of moving electricity from the transmission system to homes and businesses. Depending on the LDC, distribution costs makes up about 60% to 80% of the Delivery line. This cost is currently recovered through both a variable charge and fixed charge, approved by the OEB. Distribution rates are moving to a fully-fixed charge over next 5 years.
  - Line Loss: The costs to recover electricity that is lost as heat when it is delivered over a power line.
- **Regulated Price Plan (RPP) –** Since April 2005, the Ontario Energy Board (OEB) has administered an electricity price plan that provides stable and predictable electricity pricing, encourages conservation and ensures the price consumers pay for electricity better reflects the price paid to generators. This pricing plan is known as the Regulated Price Plan (RPP). About 5 million residential consumers, small businesses and farms are eligible for the RPP.
- **Customer classification for Hydro One –** Customer service types are determined by the kind of electricity service as well as by density – how many customers there

are in the area and the number of customers per kilometre of line. The more customers there are in the area, the lower the cost to serve. R1 customers are considered 'medium density' customers and R2 are considered 'low density customers'.

- **Ontario Power Generation (OPG) –** A business corporation owned by the province that owns and operates generation assets, including nuclear and hydro, and generates almost half of Ontario's electricity.
- **Ontario Energy Board (OEB) –** A Crown Agency that independently regulates Ontario's electricity and natural gas sectors in the public interest. Implements an open and transparent process to allow for stakeholders to comment on various items.
- **Independent Electricity System Operator (IESO) –** An independent corporation and agency of the Ministry of Energy that operates the electricity market in Ontario. Balances the supply of and demand for electricity in Ontario and then directs its flow across the province's transmission lines, including interties with other jurisdictions.
- **Class A Consumer –** Large commercial and large industrial consumers with average peak load size above 3 MW, subject to eligibility. Class A consumers pay GA based on their electricity consumption during the five highest peak demand hours during the year. On January 1, 2017 the threshold for Class A was lowered to 1MW for all consumer types.
- **Non-RPP Class B Consumer –** Commercial, institutional and small industrial consumers, typically with load size under 3 MW. Class B consumers pay GA as a volumetric rate applied to all electricity consumption. Class B consumers include those that choose not to become Class A.

What is the expected cost to government[1]?

The total cost of the proposal is $2.7B in 2017/18, $665M funded through the fiscal plan and $2.5B to be funded through the electricity rate base subject to confirmation legal, accounting and financial requirements.

Cost Impact ($M)	2016-17	2017-18	2018-19	2019-20	2020-21
Moving Social Programs to Government-Funded (details provided in the chart below)	200	665	753	829	892
GA Financing[2]		2,534	2,668	2,942	3,420
Cumulative total - Bills Lowered by 25%, RPP-Eligible Only*		3,199	3,421	3,771	4,312

For the social programs, the current estimate for the proposal is $200M in 2016/17 for the Affordability Fund (a one-time cost). The current estimate for the combined impact of the non-Global Adjustment initiatives that would begin in 2017/18 is expected to be $738M in

[1] Assumes the required legal, accounting and financial requirements can be met to avoid a fiscal cost to the government.
[2] Assumes the necessary legal, accounting and financial requirements are not met.

2017/18, growing to $828M in 2018/19 and rising. This represents an additional pressure on the plan. These estimates are based on variable inputs such as future energy consumption of various consumer groups.

Fiscacl Impact ($M)	16-17	17-18	18-19	19-20	20-21
RRRP Enhancements*	-	459	472	484	497
Ontario Electricity Support Program, including the 50% Enhancement & New Matrix Categories	-	186	261	325	375
On-Reserve First Nation Delivery Credit	-	20	20	20	20
Affordability Fund**	200	-	-	-	-
Total	200	665	753	829	892

***Note:** Current regulatory framework calls for RRRP to increase by average distribution rate increase. Forecast assumes 2.6% annually though is subject to OEB proceedings. Fiscal projection is subject to consumer consumption patterns that may change due to extreme weather or other factors. Does not include Algoma Power or Hydro One Remotes, which would continue to be on the rate base.

The impact of moving program funding from rate payer funded to government funded would result in approximately $2 savings/month for a typical residential consumer.

If the proposed legal and accounting treatment of the GA refinancing proposal is not implemented, there would be an immediate, negative impact on the province's fiscal plan. In this case, the ministry is directed to report back with options for achieving a comparable level of electricity rate mitigation in the most cost effective way in order to minimize the impact on the province's fiscal plan. The table below shows the projected fiscal impact based on bills being lowered, in combination with the existing 8% Ontario Rebate for Electricity Consumers and shifting existing OESP and RRRP costs to the government, by an estimated 25% for a typical, average household consuming 750 kWh per month.

The exact impact of refinancing the GA is unknown at this time. The intent is to establish a structure in which the GA cost recovery deferral is recorded as a regulatory asset by the IESO (which is sold to the OPG Trust), supported at its foundation by the fact that the legislation to defer the GA cost recovery is not a reduction in the GA, but rather a deferral of the GA to be collected at a future time. OPG Trust would ultimately take on the risk and responsibility of financing the deferral through debt financed from OPG and external sources. OPG's debt would be funded through a combination of an equity investment by the Province and external financing. Such a structure would result in increased gross debt of the Province (to finance the equity injection in OPG), increased interest on debt related to that Provincial debt, increased net investment in OPG (to offset the Provincial borrowing for no net debt impact), and increased earnings of OPG. Until the structure has been fully developed, which includes development of the legislation and assessing its fiscal impact which is dependent on the accounting analyses, it cannot be confirmed that the amounts deferred would not increase the government's annual deficit (or reduce its surplus) and/or

net debt. It should be noted that one of the requirements of the structure is that the government would backstop the financing if a future government were to ever revoke or change the legislation. In other words, the OPG and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen. The potential cost to government associated with providing this type of guarantee and the cost of borrowing from private lenders is unknown at this time and could increase the risk to the fiscal plan. However, it is likely that external borrowing by the OPG Trust would be at a higher interest cost than Provincial borrowing costs, which would affect the carrying costs that would need to be recovered from ratepayers in the future. Based on the current stage of analysis of the accounting, legal and financing risks, there is a high risk that the GA financing will have a fiscal impact on the Province.

There is inherent risk in the financial estimates because the calculations are highly dependent on forecasts of the total consumption and bills of customers eligible for the RPP, the cost of borrowing, electricity demand and electricity market conditions and accounting assumptions. In addition, under the proposal, electricity prices would increase around 10% above forecast residential monthly bills from 2028 to 2047.The public may expect that the government is committed to reducing or holding constant the absolute cost of electricity for consumers in the longer term. Under the proposal, the government would not have the ability to direct further changes to the rate of repayment for GA refinancing, which would limit the government's ability to address electricity rate concerns in the future.

How will the changes be communicated?

On March 2, 2017, the Premier is scheduled make a high profile announcement of additional relief to reduce electricity costs for Ontarians. To coincide with this event, there will be a news release with backgrounders, a technical briefing of the media, a public education campaign to raise awareness of the rebates and initiatives in place to reduce electricity bills, and an Ontario website that includes all the programs and initiatives that the government is undertaking to reduce electricity costs.

Given the continued high risk that the GA financing may have a fiscal impact, the communication will need to be clear that the government's intent is to draft legislation to ensure legal, accounting and financial requirements are met so not to have a fiscal impact.

CABINET OFFICE ANALYSIS

The proposal aims to provide further rate relief to Ontario electricity ratepayers. The proposal builds on earlier electricity rate mitigation initiatives, including the ending of the Debt Retirement Charge (DRC) for residential consumers, the 8% rebate on all RPP-eligible electricity bills, the enhancement of RRRP and the expansion of ICI for industrial consumers (all announced in September 2016). The proposal is projected to provide about 25% in rate relief in aggregate (including the 8% announced in 2016) for a typical residential consumer (i.e., based on a Toronto Hydro customer consuming 750kWh per month in 2017).

Since 2010, electricity prices have risen considerably in Ontario, particularly for families and small businesses. Ontario's electricity prices are among the highest of any Canadian jurisdictions, but are comparable to many neighbouring US jurisdictions. Primary contributors to the price increase in Ontario are new investments in generation, transmission and distribution. Addressing the price of electricity is among the highest priorities for Ontarians. Prices are forecast to continue to increase as additional renewable energy generation is brought online and nuclear units are refurbished. Ontario currently provides rate mitigation to various electricity consumers through a combination of tax-based and rate-based programs. Rate-based programs are funded by shifting costs from one electricity consumer group to another. However, smaller manufacturing firms in Class B do not benefit from the current ICI program or financial relief to Households.

Electricity bills contain several line items. The electricity consumption line for consumers on the Regulated Price Plan breaks down usage into the different periods by price (off peak, peak, mid peak). The delivery line covers the cost of getting electricity from generating stations to homes and businesses. There are three components to the delivery line: transmission (i.e., moving electricity from generating stations to the distribution system), distribution (i.e., moving electricity from the transmission system to homes and businesses) and line loss (i.e., costs to recover electricity that is lost as heat when it is delivered over a power line). The distribution charge is currently the largest component (60% to 80%) and is recovered through both a variable charge and fixed charge, approved by the OEB. Distribution rates are moving to a fully-fixed charge over the next 5 years (8 years for Hydro One). The efficiency and performance of individual LDCs also impact the delivery costs for consumers.

Ontario produces and publishes a Long-Term Energy Plan (LTEP) every three to four years, with the next LTEP scheduled for release in the spring of 2017. LTEP principles that will guide decision-making are affordability, reliability, clean energy, community and Indigenous engagement and conservation and demand management. Through extensive consultation with the public, stakeholders and Indigenous partners through the fall of 2016, the Ministry has identified key priorities, and this submission combined with new policy or program announcements in the LTEP will provide the comprehensive future planning perspective for Ontario's energy sector.

Under the proposal, all electricity consumers would benefit from one or more of the proposed electricity price mitigation initiatives by July 1, 2017. Additional supports for Class B consumers would be provided under an expanded ICI program and consideration will be given to providing support to residential tenants that currently don't benefit directly from rate mitigation measures.

1. Refinancing Global Adjustment in order to defer ratepayer costs

The GA accounts for the difference between generation costs (contracted and rate-regulated) and the wholesale market price, helping to recover fixed costs, including capital costs, of putting in place and operating Ontario's generation fleet, fixed generation costs, such as nuclear contracts, as well as the cost of conservation programs. The GA is

instrumental in maintaining a reliable electricity system by ensuring that sufficient generating capacity is available. The GA has risen over the past decade as the province has invested in greenhouse gas (GHG) emissions-free renewable and nuclear generation facilities, and wholesale market prices have been low due to low demand and natural gas prices.

Many of the contracted generation assets are expected to have useful lives that extend beyond the term of their current financial contracts (typically 20 years). Similarly, conservation costs are recovered through the GA on an annual basis while conservation initiatives can provide benefits to the electricity system over many years.

The proposal defers some of the current costs to ratepayers by recognizing the longer term benefit of these assets to the electricity system (similar to extending and re-financing a mortgage). The proposal is based on the assumption that some generation assets are expected to continue to provide benefit to future ratepayers beyond the term of current contracts, and that future ratepayers are expected to be able to utilize these assets and reduce the need to finance the development of new generation assets in the future.

According to a legal opinion by former Supreme Court Justice Binnie, the amount that could be financed would need to reflect the true value of the underlying assets being amortized over a longer period of time. Shifting too much of the current GA costs to future generations could jeopardize the nature of this being a regulatory charge and it being deemed a tax.

The result of the 25% reduction proposal is that costs for typical residential consumers would be lowered by $26/month with total bill increases kept in line with inflation for approximately 4 years, by borrowing money. Costs would increase to above the true cost of GA until the borrowed money, interest accumulated on the debt and the cost of administering the program is repaid fully in 2048 (see chart on page 19).

The projected residential impacts are based on a forecast for a household connected to Toronto Hydro that consumes 750 kWh per month. Actual ratepayer savings would vary due to differences in consumption patterns and LDCs.

Accounting, financial and legal analyses are ongoing and will inform an assessment of the feasibility of this proposal. If these analyses do not support the use of the non-fiscal model described in this submission, and the government proceeds to make the announcement later this week, the government is at risk that the proposed mechanism would impact the provincial deficit by up to $2.5 billion a year. Should this be the case, the ministry will report back to Cabinet with options for achieving a comparable level of electricity rate mitigation in the most cost effective way in order to minimize the impact on the province's fiscal plan.

Those ineligible to receive the GA rate relief can benefit from one or more of the other initiatives under this proposal (e.g., OESP, RRRP proposals).

2. Mechanism to Defer GA costs

The intent is to establish a structure in which the GA deferral is recorded as a regulatory asset by the IESO, supported at its foundation by the fact that the legislation to defer the GA is not a reduction in the GA, but rather a deferral of the GA to be collected at a future time. OPG would ultimately take on the risk and responsibility of financing the deferral by purchasing monthly regulatory assets from the IESO. The OPG would finance these purchases through a combination of an equity investment by the Province and external private sector financing. Such a structure would result in increased gross debt of the

Province (to finance the equity injection in OPG), increased interest on debt related to that external debt, increased net investment in OPG, and increased earnings of OPG. If structured properly, the underlying regulatory asset would offset the additional debt to not impact the province's net debt.

Until the structure has been fully developed, which includes development of the legislation and assessing its impact on the accounting analyses, it cannot be confirmed that the amounts deferred for ratepayers would not increase the government's annual deficit. It should be noted that one of the requirements of the structure is that the legislation be written to avoid the possibility of being revoked with wording to ensure OPG and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen. The potential cost to government associated with providing this type of guarantee and the cost of borrowing from private lenders is unknown at this time. Based on the current stage of analysis of the accounting, legal and financing risks, there is a high risk that the GA financing will have a fiscal impact on the Province.

OPG is currently exploring creating a Special Purpose Vehicle (SPV) or Trust ("OPG Trust") to finance the GA. The SPV/Trust will be consolidated by OPG, giving OPG the appropriate powers to impact its exposure to variability of the income in the trust. The variability will likely largely result from the financing of the Trust, and therefore OPG will have the ability to direct the financing of the Trust and both benefit from its financing strategy and be at risk as a result of it.

Assuming that all legal, accounting and financial requirements can be met, the proposed structure is expected to result in: (1) increase in provincial gross debt offset by an equivalent in regulatory assets resulting in no change in net debt, and (2) an increase in interest on debt paid by the province offset by higher earnings from OPG resulting in no impact on annual deficit of the province.

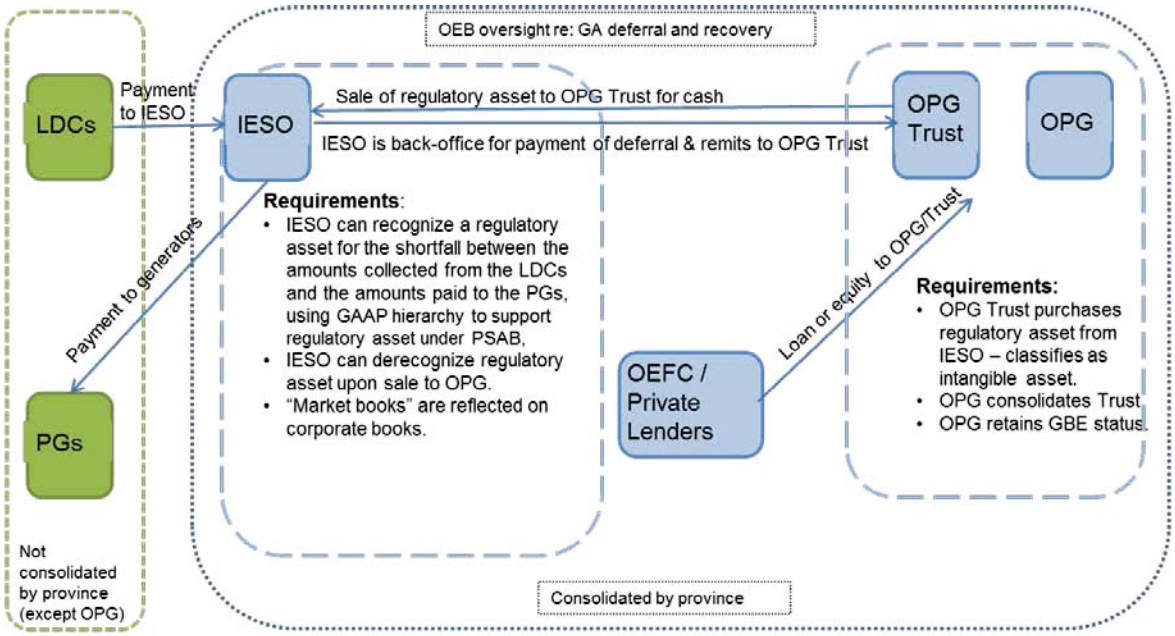
The analysis of the structure with respect to accounting, legal and financial risk is not complete; several key requirements remain outstanding:

- Complexity of the structure and length of deferral/recovery increase risk and decrease transparency
- IESO requirements – IESO Finance, KPMG (Energy advisor and IESO auditor), OPCD and EY (OPCD advisor) are evaluating accounting risks:
    - IESO can recognize a regulatory asset for the shortfall between the amounts collected from the LDCs and the amounts paid to the PGs using GAAP hierarchy to support regulatory asset under PSAB
    - IESO can derecognize regulatory asset upon sale to OPG; and
    - "Market books" are reflected on corporate books.
    - In addition to these requirements, it will also be necessary to establish who will act as the regulator as in order to have a regulatory asset, a regulator is required. The ministry is working with the OEB about their potential regulatory role.

- OPG requirements – OPG Finance, EY (OPG auditor), PwC (OPG Advisor), and OPCD are evaluating accounting risks:
  - OPG Trust purchases regulatory asset from IESO – classifies as intangible asset;
  - OPG consolidates Trust; and
  - OPG retains GBE status.

If a mechanism can be structured that satisfies these requirements, there remain some fundamental risks that the province would need to accept:

- Government would have no ability to control electricity prices resulting from these changes;
- Government would not know the price of private borrowing that would be required for the OPG Trust to work; and
- Private lenders would likely require a guarantee, break fee or other backstop because government cannot commit to the legislation being irrevocable.



Note: Proposed structure is subject to legal and accounting confirmation, absent that confirmation, there would be a fiscal impact to the province.

The ministry continues to work with TBS, MOF, the IESO, the OPG and their external auditors for IESO and OPG on an appropriate structure and will report back to Cabinet with the proposed structure for approval in winter 2017.

3. Support for Class B electricity consumers and Residential Tenants

Class B electricity consumers comprise about 50,000 customers, including many mid-size manufacturers, large commercial buildings and broader public sector facilities. There are several energy efficiency programs for Class B consumers; however, these consumers are too large for the RPP and so do not qualify for the 8% rebate or too small for other support programs such as the Industrial Conservation Initiative (ICI).

The Ministry of Energy is proposing to expand the eligibility threshold for ICI that will provide Class B consumers the opportunity for electricity costs savings. The expanded ICI would include:

- Extending eligibility to larger Class B consumers with average monthly peak demand over 500 kilowatts;
- Targeting eligibility to energy intensive industries with the North American Industry Classification System (NAICS) codes 31 - 33 (i.e., Manufacturing); and
- Providing small manufacturers with greater flexibility in meeting ICI requirements.

Under the expanded ICI, larger Class B consumers whose electricity demand is currently too low to qualify for ICI, would now be eligible for the expanded ICI if they wish to participate. In addition, the Ministry will assist Class B participation in ICI through a targeted outreach campaign.

Currently, residential tenants generally either pay for their own electricity use through suite meters (i.e., sub-meters or direct arrangements with hydro providers) or pay for electricity indirectly as a service included in their rent. Tenants who pay for their own electricity will receive electricity costs savings directly through their bills. Low-income tenants who pay their own electricity bills can access existing energy support programs, such as the Ontario Electricity Support Program, administered by the Ontario Energy Board. The Ministry of Housing has identified that it may have limited tools to address rate mitigation for all tenants who are not suite metered. The ministry will explore options for providing energy rebates directly to tenants who are not sub-metered and whose rent includes electricity.

4. Enhancing electricity support and conservation programs and shifting cost from rate payer funded to government funded:

RRRP Enhancement (Delivery Charge Relief):

Currently, RRRP is a $241.9M program paid for by the ratepayers. For an average residential customer, the cost of supporting RRRP is roughly $1.58 per month. For other customers, the cost to support the RRRP can range from $65 for a greenhouse to $8,000 for a medium industrial. RRRP helps to offset the higher costs to distribute electricity to Ontario residents who live in rural or remote locations all across the Province, including Hydro One R2 customers. The delivery charge includes a distribution cost, which can vary across LDCs, and distribution costs are highest for Hydro One R2 and R1 (medium density) customers.

There are also some LDCs with relatively high distribution costs that, when coupled with high consumption patterns, can result in very high bills for consumers (Northern Ontario Wires, Lakeland Parry Sound, Chapleau, Sioux Lookout, InnPower, Atikokan and Algoma).

In 2016 the OEB made a ruling that all LDCs need to move to fixed distribution charges. The OEB found that fixed distribution charges would establish a fairer way to recover the costs of providing distribution service, and provides greater revenue stability for distributors, which will position them for technological change in the sector, remove any disincentive to promote conservation, and help with their investment planning. The ministry proposes to provide support on the delivery portion to those most in-need by:

- Moving the RRRP from rate payer funded to a government funded program; and
- Harmonizing the fixed distribution rates to the lowest distribution cost of the LDCs mentioned above at $38/month (which is the forecast rate for Northern Ontario Wires). If the costs of another LDC moved above these in the future, a regulation change would be required to for that LDC to receive RRRP.
- These enhancements are expected to benefit approximately 800,000 customers in Ontario.

For this portion of the proposal, targeted RRRP consumers would see additional savings on their monthly bill that would vary based on their consumption level and cost to fiscal plan would be $459M in 2017/18, $243M of which is a transfer of existing programs to the tax base.

Ontario Electricity Support Program (OESP) Expansion:

The OESP is an income-tested, application based program that lowers electricity costs of the most vulnerable consumers by providing a rebate directly on electricity bills. The program was launched in January 2016 and has had roughly 30% enrolment. There are two benefit scales; the basic program credits by income and household size (credits range from $30/month to $50/month); the enhanced benefit credits for Indigenous, electric heat consumers and certain medical devices (credit ranges from $45/month to $75/month).

The ministry is proposing to:

- Move the OESP from rate payer funded to government funded; and
- Increase the existing benefit scales by 50% and provide additional credits to more households.

For this portion of the proposal, the basic OESP benefit scale would increase from $30-$50 to $45-$75 a month and the enhanced OESP benefit scale would increase from $45-$75 to $68-$113 a month for eligible consumers and the cost to fiscal plan would be $186M in 2017/18.

New Affordability Fund

The existing Home Assistance Program provides eligible low-income customers with energy efficiency upgrades (such as new energy efficient appliances, energy-saving light bulbs (LEDs), power bars, and other energy efficiency measures) and education, at no cost, to help improve the energy efficiency and comfort of their homes. Program eligibility

is aligned with other low-income support programs such as the OESP and the program is delivered by LDCs.

The low income household definition is derived from Statistics Canada's income measures. The most commonly used measure is the after tax Low Income Measure (LIM), which takes into account household size. Some electricity customers who struggle to pay their electricity bills do not meet the definition of a low-income household and therefore are not eligible for the Home Assistance Program.

The ministry is proposing to:

- Establish an Affordability Fund in 2016/17 that would help struggling customers who do not qualify for low income conservation programs and cannot undertake energy efficiency measures without financial assistance. The Fund would be paid for by the government with a one-year fiscal impact of $200M in 2016/17 and be administered by an independent trust.
- Over time the Fund could help targeted customers, based on standardized eligibility criteria get back on track with their bills and also avoid disconnection costs by assisting them to lower their bills through energy conservation.

Measures available in the Home Assistance Program could include:

- Energy-saving light bulbs (LEDs); power bars; energy efficient window ACs, refrigerators, freezers, dehumidifiers; low-flow showerheads, hot water blankets, pipe wrap and faucet aerators (in homes with electric water heating);
- Programmable thermostats, weather stripping, insulation (in homes with electric heating); and
- Cold climate air source heat pumps would also be an eligible measure under the Affordability Fund. Heat pumps can range in cost from $7,000 to $13,000.

The government has created a new climate change agency as committed through the Climate Change Action Plan, which will serve as a one-window for the delivery of climate change-related programs (e.g., conservation programs), including those delivered by LDCs. ENERGY and MOECC will work together to avoid consumer confusion with respect to the support this Fund will provide alongside the newly established Climate Change agency.

<u>On-reserve First Nations Delivery Credit</u>

First Nation and Political-Territorial Organization leaders have advocated for the need for electricity rate relief for on-reserve customers and the review of delivery charges associated with transmission and distribution within the context of historical grievances. In this instance, historic grievances relate to lands affected by energy developments (e.g. transmission infrastructure built on reserve lands where the First Nation may not have been consulted, or in some cases transmission infrastructure may cut reserve lands in half, thereby limiting the use of the land base).

A Grievance Table process was established at the request of the Chiefs of Ontario as a part of the process of broadening the ownership of Hydro One. The cost of electricity and delivery charges were identified as the main priority at this table. At the request of the Minister of Energy, the OEB worked with the Chiefs of Ontario to develop options to address these issues. The ministry is proposing to implement the recommendations of the OEB's report.

The ministry is proposing to:

- Eliminate the delivery charge for all on-reserve First Nations residential customers and eliminate the monthly service charge for customers of licensed distributors which charge a bundled rate.
- Automatically qualify on-reserve First Nations residential customers (~21,500 customers)
- Enable greater information sharing between distributors and band councils to identify all on-reserve First Nations customers in 2017.

This proposal would be funded by the government ($20M annually) and provide on-reserve First Nation customers an average monthly benefit of $85.

5. Ongoing activities to bend the future cost curve of electricity:

<u>OEB – opportunities for OEB red-tape reduction and future LDC efficiencies</u>

The OEB has a mandate to regulate the electricity distribution sector in the public interest, ensuring the financial viability of the sector while promoting reliable service to customers at just and reasonable rates. The OEB has been working to move the distribution sector towards a performance/outcomes-based regulatory framework.

Encouraging shared partnerships on services between utilities will help reduce costs in the back end and encourage further innovation for small to medium sized utilities. In 2012, the government asked the Ontario Distribution Sector Review Panel to make recommendations about how the distribution sector could become more efficient. The Panel concluded that a $1.2 billion net present value in savings could be achieved by consolidating LDCs into 8-12 regional entities over the first ten years after consolidation.

Opportunities:

- ENERGY could ask the OEB to look at opportunities to further drive LDC efficiencies and productivity. This may indirectly incent LDC consolidation.
- The OEB could be instructed to review business cases behind its own regulatory requirements to reduce "red tape" and eliminate costs that LDCs indicate are creating pressures on operating expenses.

This could be done through the Minister's letter, the LTEP Implementation Directive, s. 35 of the Ontario Energy Board Act, 1998, and/or the 2017 Mandate Letter and other agency business planning processes.

IESO – Modernize Ontario's electricity market through electricity Market Renewal initiatives

Current IESO Market Renewal initiatives include:

- Moving to "technology-agnostic" procurements will provide new opportunities for innovation and modernization and ensure ratepayers receive the best prices possible.
- Market Renewal encompasses projects such as a single-schedule system (from the current two-schedule system), more frequent intertie scheduling to better align with other jurisdictions and a day-ahead market. There will be up front capital costs to enable the initiative. IESO is currently assessing these costs.

Changes related to IESO's Market Renewal initiatives, reflected in the wholesale electricity price and uplifts, are estimated to save at least $200 million per year, starting in 2021.

Expected Impacts of the Proposal on Electricity bills:

The projected impact of this proposal to an average residential customer bill in July 2017 is up to a 25% decrease, followed by an increase in price over time. This includes the 8% rebate that came into effect on January 1, 2017.

Residential (750 kWh/month)	Actual 2016	2017	2018	2019	2020	2021
Total Bill (includes HST)	**158**	**164**	**167**	**170**	**181**	**178**
Total Bill (excludes HST)	140	145	148	150	160	158
Impact of GA Financing		-26	-26	-26	-32	-28
Impact of Tax-Basing Social Programs		-2	-2	-2	-3	-3
Subtotal		117	120	122	125	127
8% rebate		-9	-10	-10	-10	-10
HST		15	16	16	16	17
Revised Bill (includes HST)	**158**	**123**	**126**	**128**	**131**	**133**
Year-over-Year Change		-22%	2%	2%	2%	2%
Change from Forecast		**-25%**	**-25%**	**-25%**	**-28%**	**-25%**

Commercial & Small Industrial ($/MWh)	Actual 2016	2017	2018	2019	2020	2021
Class B Total (excludes HST)	**160**	**165**	**160**	**162**	**173**	**169**
Class B Revised Total (excludes HST)	**160**	**162**	**157**	**159**	**170**	**166**
Year-over-Year Change		1%	-3%	1%	7%	-2%
Change from Forecast		-2%	-2%	-2%	-2%	-2%

Large Industrial ($/MWh)	Actual 2016	2017	2018	2019	2020	2021
Class A Total (excludes HST)	**90**	**91**	**93**	**88**	**95**	**96**
Class A Revised Total (excludes HST)	**90**	**88**	**90**	**84**	**92**	**93**
Year-over-Year Change		-2%	2%	-6%	9%	1%
Change from Forecast		-4%	-4%	-4%	-4%	-4%

Notes: *Based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer. Above Class B estimate based on a 1 MW customer connected to Toronto Hydro, assumes delivery charge escalates as per residential forecast. "Social programs" refers to*

existing RRRP and OESP. While initiatives would take several months to implement, the above estimate for 2017 reflects a full-year impact. The 8% rebate above represents savings compared to status quo due to the reduction in the sub-total from GA financing.

Stakeholder Considerations:

General public (including residential and small businesses) – Likely support a proposal that is projected to provide up to 25% in rate relief (including the 8% announced in 2016) for a typical residential consumer to, but likely to question the longer term implications. Ability of the public to understand current and recent changes will heavily depend on government communications.

Large Industrial and Commercial Consumers – Will continue to be concerned with the impact of cap and trade on electricity prices and the commitment in the Climate Change Action Plan to use GGRA funds to "keep electricity rate affordable".

The impact of cap and trade has been added to electricity bills as of January 2017. Class B consumers have raised concerns about the cost of electricity and its impact on their business competitiveness. Although Class A electricity consumers have access to ICI, they are also concerned about the impact of cap and trade on their electricity costs. They are expecting that GGRA funds will be used to mitigate their costs. There is an expectation government is going to take specific action to mitigate their increases due to Cap & Trade, and given the initiatives proposed in this submission, there is no plan to provide further relief through the Greenhouse Gas Reduction Account. **Note:** Funding electricity support programs through the tax-base rather than the rate base will provide some saving to both Class A and B consumers.

Tenants – Likely to support any future price mitigation measures that directly benefit them; likely to react negatively if no mitigation measures target them.

Northern communities – Likely to support the targeted RRRP delivery relief.

Indigenous communities – First Nation members who live on reserves are likely to support the proposal because of the targeted delivery relief. Other Indigenous communities (i.e., Metis, non-status, First Nations without land bases) are likely to react negatively at being excluded from the delivery charge relief.

eNGOs – Likely to support any targeted conservation efforts, may react negatively towards any price relief that is not directly tied to energy conservation.

LDCs – Have expressed the need for an additional tool to provide assistance to their customers who are having difficulty with their electricity bills.

Delivery:

The initiatives in this proposal would be announced in March 2017, with price mitigation measures beginning to take effect July 1, 2017. The 2017 LTEP will be released to the public in May 2017 and would reinforce/integrate with this proposal.

1. Refinancing Global Adjustment assets in order to defer ratepayer costs / Mechanism to defer GA costs

The ministry will report back to Cabinet and TB/MBC in March 2017 on the recommended implementation approach and mechanism for refinancing Global Adjustment assets in order to defer ratepayer costs and for Class B supports.

This initiative is expected to take three to six months to implement following the introduction of enabling legislation.

2. Enhancing Social and Conservation Programs

RRRP Enhancement

New legislation and regulations would be required to establish this program. OEB estimates that the implementation would take at least six months after finalizing regulations. A mechanism will need to be created to ensure that all parties are aligned in the yearly forecasting and costing of the program.

OESP Enhancements

New OESP program details would require TB/MBC approval.

Changes to legislation/regulation will be required to establish and define the parameters for the proposed changes. The financial flow-through mechanism would likely be modeled after processes used for the OREC (8% rebate).

The proposed changes will take time to implement as they would require changes to the central system and the LDCs' billing systems. The OEB and their central service provider will need to work with LDCs, MOF, and the CRA on the proposed changes to this program (delivery mechanism, funding source, application system, eligibility).

New Affordability Fund

This is a new program that would require TB/MBC approval.

ENERGY proposes to work with Hydro One to set up an independent Trust to serve as the Fund Administrator. The Fund Administrator would manage the flow of funds to LDCs based on principles set by the province in consultation with other LDCs and key stakeholders. The Fund Administrator will also be responsible for establishing processes, administration, and criteria for funding applications, thereby ensuring the program would be managed on a consistent basis across the province.

LDCs would apply for funding to the Fund administrator, to offer energy efficiency measures to those customers in their service territories that meet the targeted eligibility criteria.

LDCs have over 10 years of experience in delivering conservation programs, including experience specific to contracting for programs that target low-income customers. Individual LDCs would then be best positioned to identify and target their customers who are most in need.

On-Reserve First Nations Delivery Credit

Legislation and regulations would be required to implement this program. The OEB would need to work with the LDCs to identify the on-reserve consumers. A communications plan could include public release of the OEB report and a commitment to working with the LDCs on implementation details.

The rebate would appear on customer's electricity bills as a reduction in their delivery line.

There is a risk that either non-status Indigenous communities without reserves or Metis could challenge the program on the grounds that it discriminates against them contrary to section 15 of the Charter. This risk is mitigated by the ameliorative purpose of the program and because targeting First Nations communities for a reserve-based program corresponds to the distinct circumstances of reserve-based communities, relative to other Indigenous communities. A genuinely ameliorative program that targets some people but excludes others is shielded from a section 15 challenge if it serves or advances the ameliorative goal.

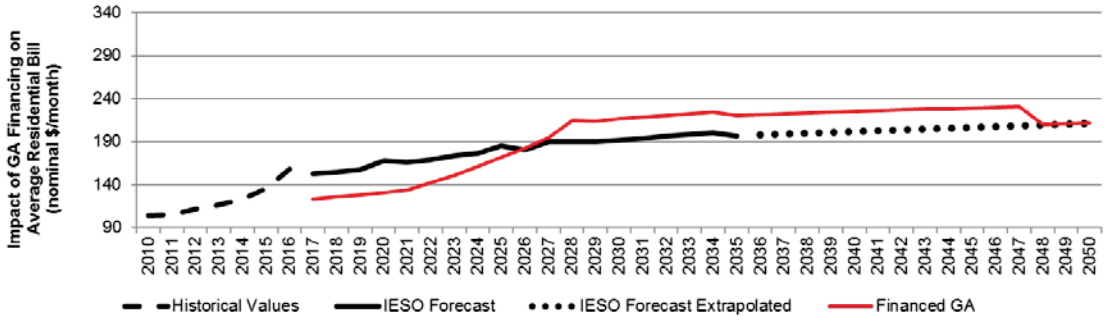
5. Ongoing Efforts to bend the cost curve of electricity

These initiatives could be directed through the Minister's letter, the LTEP Implementation Directive, s. 35 of the Ontario Energy Board Act, 1998, and/or the 2017 Mandate Letter and other agency business planning processes.

Risks and Considerations:

Future Impacts to Electricity Rates

Borrowing money to defer GA costs for ratepayers would lower costs in the short term but result in substantial debt and higher electricity prices in the future. Based on this portion of the proposal, electricity prices would increase to about 10% above the actual cost of electricity over the recovery period (peaking at 13%). The proposal may create the expectation that the government is committed to reducing or holding constant the absolute cost of electricity for consumers. Under the proposal, the government would not have the ability to control this portion of electricity rates in the future.



Notes: Assumes 30 year financing period and a nominal interest rate of 5% (compounded monthly). Ratepayer GA payments increase annually beyond 2021 such that the average monthly residential electricity bill increases by 6.5% per year with a limit of $2.2 billion above the true cost of GA in any given year to cap repayment charges at a maximum of 13% of total bill. IESO forecast is based on IESO's revised OPO forecast as of February 2017. Includes the cancellation of LRP II and EFW, expansion of ICI. Does not include smoothed OPG rates. Above residential bill is based on a 750 kWh per month Toronto Hydro customer.

The government may be criticized for creating a new debt structure which could be compared to the previous debt retirement charge (DRC). The previous debt retirement charge was removed from residential bills in January 2016 and is scheduled to be removed for remaining customers in April 2018.

Future repayment cost estimates are based on a static interest rate of 5%, and forecast electricity market conditions and demand levels. Declining demand levels due to conservation, technology adoption, and self-generation would increase the costs borne by remaining customers to decease the debt associated with GA financing. This would increase the risk that the province would have to absorb some of the debt in the future.

Not all generating assets will continue operations at the end of their contract, in that case, future rate payers will be paying the cost for assets that are no longer in use. High capital costs, equipment obsolescence or surplus capacity / low demand conditions mean that some generators will shut down at the end of their contract. Future ratepayers would be paying for these assets that no longer produce power in paying down the deferred GA and accumulated interest costs.

Accounting and Provincial Credit Rating and Borrowing

The significant amount of additional provincial borrowing needed to refinance the GA and associated risks and fiscal costs (interest rates, repayment timelines) could put pressure on the Province's credit rating and overall borrowing capacity.

The complexity of the structure and length of deferral (i.e., recovery of debt) increase the overall risk of the proposal and decrease transparency to the public. If all requirements can be met, an accounting analysis is expected to support: (1) increase in provincial borrowing (2) no increase in net debt, and (3) no impact on annual surplus/deficit. However, depending on funding to OPG/ OPG Trust from the Province, an increase in interest on debt and an increase on income from OPG will result.

Rating agencies and investors in the Province's debt may view all of the borrowing (whether by the Province directly or the OPG Trust) as an obligation of the Province. Depending on the magnitude of the debt incurred, the Province's borrowing cost may be impacted.

To date, the Ontario Auditor General (OAG) opinion on the proposal has not been sought. While the auditors of OPG and IESO are providing their preliminary assessments and the Office of the Provincial Controller Division (OPCD) has been engaged, the OAG has historically raised concern with “rate regulated accounting” and may take this into account when the provincial books are audited (i.e., it may impact whether the OAG qualifies the provincial books).

Based on early assessments, only a maximum of 18% rate relief can be justified by amortizing contracts over the useful life of the underlying assets. Reducing electricity rates up to or beyond this amount is dependent on increased borrowing. All of the deferral is dependent on increased borrowing. The 18% referenced here is the limit based on review of the contracts and a Eurig assessment and also includes the 8% reduction that was already provided.

The current GA amount paid by consumers is a regulatory charge. One of the requirements of a valid regulatory charge (as opposed to a tax) is that the person paying the charge either benefits from the regulatory scheme or causes the need for regulation. In principle, refinancing the GA to spread the costs of generation and conservation assets over the useful life of the assets presents only a low risk of being a tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

However, a proposal for refinancing the GA that appears to cross-subsidize near-term consumers at the expense of long-term consumers by back-loading costs more than if costs were spread equally over the estimated lifespan of generation and conservation assets presents a moderately high risk (more likely than not) of constituting a tax. Were the charge characterized as a tax, in the event of a challenge, it would be struck down by a court as unconstitutional and consumers would be entitled to recover their payments. This risk could be eliminated, either up front or retroactively, by the imposition of a valid tax.

Retired Supreme Court of Canada Judge Ian Binnie has provided further legal analysis of this proposal, stating that the amount that could be financed would need to reflect the true value of the underlying assets being amortized over a longer period of time. Shifting too much of the current GA costs to future generations could jeopardize the nature of this being a regulatory charge.

Fiscal Pressure

This proposal does not align with the 2016 Budget fiscal plan and there are no proposed offsets identified. The proposal does not include a scheduled review period or an end date, resulting in an ongoing fiscal pressure, which may increase in the out years, and could only be removed by a legislative amendment.

The cost projections in this proposal are highly sensitive to interest rates and other assumptions:

- The proposal assumes GA refinancing does not have a fiscal impact because the associated legal authority and accounting treatment requirements are met. If the costs of GA refinancing were accounted for as an expense to the fiscal plan, the fiscal impact would be significant.

- The term and timing of the GA refinancing are highly dependent on the IESO's forecast of GA costs and actual interest rates.

The extent of fiscal pressures is also dependent on other factors (i.e., OAG could qualify Ontario's books or issue an adverse opinion). Due to the complexity and size of the proposal, the government (i.e., OPC) and agencies of the government (OPG and IESO) have various external advisors providing preliminary assessments and recommendations on a model that would support the desired outcome.

There may be some criticism that additional fiscal pressure and risk is being taken to benefit some customers that are not in as much need of rate relief as others (i.e., those that own second homes or cottages).

Legislative Officers

The Ontario Auditor General (OAG) has expressed views on rate regulated accounting, which will likely be raised again upon the announcement of this suite of initiatives. The OAG has not been consulted on this proposal and will have opportunities to publicly state her views through the Public Accounts committee in the summer of 2018 and in her pre-election report.

The Financial Accountability Officer (FAO) has not been consulted on this proposal and is expected to have an opinion on how this proposal may impact the state of the province's finances.

Mechanism or Plan for OPG

- Accountability
    - Need to balance independence of the OPG trust with regulatory oversight and the market's need for certainty in recovering the GA financing that it provides.
    - Accountability to the government or the public, amount of government control of the entity, including future rate increases.
- New structure
    - Structure is complex, involving:
        - IESO as originator of the regulated asset and responsible for flow of funds;
        - OEB as regulator of the new mechanism;
        - OPG responsible for financing and managing the mechanism; and
        - The Province providing ongoing equity capital infusions to OPG.
    - Addition of financial agency to current operational obligations of OPG – not the current expertise of OPG. However, OPG has experience managing large financial assets and liabilities through the jointly managed Ontario Nuclear Funds as well as its own pension fund. In addition, could possibly dilute

OPG's focus on current high priority responsibilities (i.e., electricity generation and nuclear refurbishment).

  - This financing structure would be unique to Canada – uniqueness reduces likelihood of all risks being known/mitigated. Highly specialized expertise would be required.
  - Connection to BPS compensation framework/lack of national comparator.
  - Unknown transaction, admin, consultant costs.

- Debt
  - Opportunity for significant shifting of the Ontario's electricity sector over the lifespan of the repayment (30 years). Through sector/policy/government position shifting, possibility of new entity/structure abandoning debt and Ontario having to take a write down.
  - Risk transfer / portion of debt that Ontario would be responsible for would be the higher risk portion.
  - Repayment plan and impact on rate payers highly dependent on interest rates
- Public perception/reaction (could be seen as similar to the process preparing Hydro One for IPO).

Legal Risk – constitutionality of financing the GA

Former Supreme Court Justice Ian Binnie has provided a legal opinion which concludes that the current proposal is at a moderately high risk of being a tax. The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30 year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).

By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers. In short, the bigger the reduction in charges to current consumers, the greater the constitutional risk.

The risk identified by Mr. Binnie could be eliminated, either up front or retroactively, by the imposition of a valid tax.

Program Design and Implementation

The proposal relies heavily on LDCs as a partner for implementation. Many of these changes will need to take place simultaneously and amongst the 70 LDCs in Ontario there is variety in size, efficiency and ability to implement change.

- Program design will require an evaluation of whether the existing programs are effective and achieving their outcomes (e.g. the OESP has a current uptake of 30% and program changes are proposed in advance of an increased effort to reach 100% uptake, also it is unclear whether the existing HAP program could be expanded – or modified before creating a new LDC Affordability program)
- Implementation of new Affordability Fund - it is expected that Hydro One would be one of the participating LDCs involved in setting up the Trust to administer the Fund. As such, the ministry is working to ensure that funding flows before year-end 2016/17 to the Trust as any monies that are sitting in Hydro One at year-end would be consolidated with the province and a corresponding fiscal pressure in the following years when the funds are flowed from Hydro One (H1) to ratepayers. Details about the establishment of the Trust are still being determined by the ministry, in consultation with the OPCD and Hydro One.
- The OESP matrix would no longer follow the Low Income Measure (LIM) which would flag inconsistencies between how programs are applied or put pressure other provincial programs to increase funding amounts

Benefits for all Consumer Classes

The proposal includes some benefits for all consumer classes as well as targeted benefits to those with the greatest need. It is likely that the government will be criticized for providing benefits to those who may not be in need (e.g., wealthy cottage communities, etc.).

Alternative Options Considered:

1) Status quo – in the absence of this proposal electricity rates are forecasted to increase by 10% from 2017 to 2020. To date, the province has implemented an 8% rebate on all residential bills, in addition to expanding RRRP and broadening of ICI. Could include additional public communications about existing electricity price mitigation initiatives (e.g., the DRC will be removed from industrial consumers in 2018).
2) Provide up to 25% rate relief across all consumer classes (residential, small business, commercial and industrial funded from the fiscal plan). The projected cost would be $4B/year above the existing cost of the 8% rebate.
3) Provide a total of 20% or 18% rate relief (versus 25%) through a combination of deferral of GA costs, social programs and the existing 8% rebate.
4) Capping the amount an LDC can bill consumers for distribution service at a specific cost, with distribution costs that exceed this cap covered by the support from the fiscal plan. This would have been temporary until the completion of the OEB-mandated move to completely fixed distribution costs (scheduled for 2019, 2020-2022 for Hydro One), or having LDCs take on some of the GA deferral cost with long term repayment terms.
5) Achieving lower GA costs through renegotiating the existing contracts with the power generators.

6) Investing in targeted social programs that could be application based in the short term, providing a more targeted benefit to those in greatest need.
7) Procuring additional hydroelectricity from Quebec, would require upgrades to transmission infrastructure and would be more costly than domestic alternatives.
8) Using IESO and/or creating a new special purpose entity, independent from the Province that would be dedicated to GA refinancing.
9) Capping electricity rates at 1.7% for 3-to-4years and capping the salaries of electricity sector executives.
10) Expanding access to natural gas for home heating by increasing funding to the natural gas expansion program by $100 million. This could also include additional support to address conversion costs (i.e., switching away from electric heating to natural gas).

Linkages:

Long-Term Energy Plan (LTEP) – Ontario is preparing to release a new LTEP in April 2017. These plans identify needs for investments over the shorter term, while broadly mapping out the direction of the sector over a 20 year timeframe. The LTEP will balance the principles of affordability, reliability, clean energy, community and Indigenous engagement, as well as conservation and demand management.

Electricity Rate Mitigation Initiatives – The Ontario Rebate for Electricity for Electricity Consumers Act, 2016, (ORECA) put in place an 8% rebate for residential, small business customers and farms beginning January 1, 2017.

The Ontario Clean Energy Benefit (OCEB) was a five-year legislated program put in place as a broad-based, transitional measure to a cleaner electricity system. OCEB was also put in place following the implementation of the Harmonised Sales Tax (HST). Unlike the previous provincial Retail Sales Tax (RST), the HST (and GST) included electricity in the taxable base. OCEB expired on December 31, 2015.

Debt Retirement Charge – The government also recently ended the electricity Debt Retirement Charge (DRC) on residential users earlier than planned, as of January 1, 2016, and put in place the low-income targeted Ontario Electricity Support Program (OESP), effective 2016. For all other consumers the DRC is scheduled to be removed by April 2018.

Ontario's Climate Change Action Plan (CCAP) – The CCAP, released in summer 2016, reiterated the 2016 Budget commitment and stated that Ontario intends to invest in initiatives that both reduce greenhouse gas (GHG) emissions and ensure that the net impact of cap and trade would not result in an overall increase in electricity costs for commercial and industrial consumers, and that there would be a modest benefit of up to $2 per month, on average, to residential consumers. This commitment to residential consumers was met by the January 2017 8% rebate.

The commitment to mitigate the cap and trade impact on electricity costs for commercial and industrial consumers (i.e., Class A and B) has not been addressed. **Note:** Funding electricity

support programs through the tax-base rather than the rate base will provide saving to Class A and B consumers.

The CCAP committed to a new Climate Change agency that would act as one window for the delivery of climate change-related programs (e.g., energy management programs).

The CCAP committed to “consider options for legislation/regulation change that lessen the impact on residential tenants of increased energy costs from cap and trade”. As part of the review of the Residential Tenancies Act, the Ministry of Housing is working on a proposal that will address that commitment. The proposal is expected to come to Cabinet in spring 2017.

PROPOSED CABINET MINUTE

Cabinet agreed that:

ENERGY develop electricity rate mitigation actions that, in total, support a 25% electricity bill reduction (including the 8% reduction announced in 2016) in 2017 for a typical household by undertaking the following actions:

1. For consumers eligible to be billed under the Ontario Energy Board's Regulated Price Plan (RPP) and any other consumers who would be eligible for RPP if their electricity account was with a licensed distributor, ENERGY:

    A. Subject to completed legal, accounting and financing risk assessments, finance a portion of the Global Adjustment (GA) costs in order to partially defer RPP-eligible ratepayer GA costs by reducing projected after-tax electricity costs for a typical customer consuming 750kWh per month in 2017 by about 16% (i.e., $26 per month). Total projected bill increases will be kept in line with Consumer Price Index (CPI) until the end of 2021. From 2022 onwards, bills will increase at a rate that ensures gradual recovery of the accumulated debt and associated financing costs by 2048, with escalation in subsequent years set above CPI in order to ensure that bill increases due to repayments are capped at around 10% of the total bill. To this end:

        i. Explore expanding the powers of Ontario Energy Board (OEB), Independent Electricity System Operator (IESO), and Ontario Power Generation (OPG), and using other mechanisms, including the putting in place of appropriate payment, settlement and cost-recovery authorities for and through the IESO (including accommodating payments to and from any appropriate entity) to manage the deferred GA costs.

2. ENERGY develop and implement, subject to appropriate Treasury Board/Management Board of Cabinet approvals, rate mitigation initiatives targeted at specific populations, including:

    A. Broadening the Rural or Remote Rate Protection (RRRP) program to mitigate distribution charges for customers of Local Distribution Companies (LDC) with some of the highest distribution rates, and moving the program from a ratepayer funded program to a government funded program beginning in 2017, including:

        i. Harmonizing distribution cost for customers with the highest distribution rates (Hydro One (R1 and R2 rate classes), Algoma Power, Atikokan Hydro, InnPower, Chapleau Public Utilities Commission, Sioux Lookout

Hydro, Lakeland Power (Parry Sound service territory) and Northern Ontario Wires Inc) at the lowest distribution rate paid by an average consumer in this group by fall 2017.

B. Expanding every benefit level of the Ontario Electricity Support Program by 50%, moving the program from a ratepayer funded program to a government funded program beginning in 2017 and pursuing additional measures to substantially increase take-up;

C. Establishing a new one-time government funded Affordability Fund in 2016/17 to provide relief to electricity customers who do not qualify for existing low income programs and cannot purchase energy efficiency measures without financial assistance;

D. Establishing a new province-wide government funded program beginning in 2017 that would eliminate the delivery charge for First Nations customers on reserve; and

E. Expanding the Industrial Conservation Initiative (ICI) by reducing the eligibility threshold to 500 kW for consumers under North American Industry Classification System (NAICS) codes 31-33 (i.e., manufacturing) to enhance competitiveness for Class B electricity consumers beginning July 2017. Newly eligible consumers would be required to opt-in to the program if they wish to participate.

3. ENERGY report back to TB/MBC, prior to announcement, on:

   A. A feasible mechanism for refinancing the Global Adjustment, per minute 1A, including completed legal, accounting, and financing risk assessments.

   B. If a non-fiscal mechanism cannot be established for refinancing the Global Adjustment, options for achieving a comparable level of electricity rate mitigation in the most cost effective way in order to minimize the impact on the province's fiscal plan.

   C. Additional proposed rate mitigation initiatives targeted at specific populations, per minute 2, including a proposal to move the RRRP and OESP from ratepayer funded programs to government funded programs.

4. ENERGY, through the Long-Term Energy Plan, take steps to further reduce electricity rates across the system by:

   A. Ontario Energy Board (OEB) – Identify opportunities for OEB red-tape reduction and future LDC efficiencies and rates;

B. Directing Independent Electricity System Operator (IESO) – Modernize Ontario's electricity market through electricity Market Renewal initiatives.

5. ENERGY to explore additional rate mitigation initiatives targeted at specific populations, including:

   A. Working with the ministries of Economic Development and Growth (MEDG), Finance (MOF), Environment and Climate Change (MOECC), Labor (MOL) and Small Business to identify additional opportunities to assist Class B electricity consumers and small and medium sized manufacturers' and report back to Treasury Board/Management Board of Cabinet and Cabinet in winter 2017.

   B. Working with the Ministry of Housing to explore ways to provide direct assistance to tenants that are not sub-metered and do not directly benefit under the existing and proposed rate mitigation programs and report back to Treasury Board/Management Board of Cabinet and Cabinet in winter 2017.

6. ENERGY seek any further Treasury Board / Management Board of Cabinet approvals of these initiatives prior to implementation.

7. ENERGY report back to Treasury Board / Management Board of Cabinet by 2021 with a review of the Rural or Remote Rate Protection (RRRP) program changes, including the efficiency and effectiveness of the program.

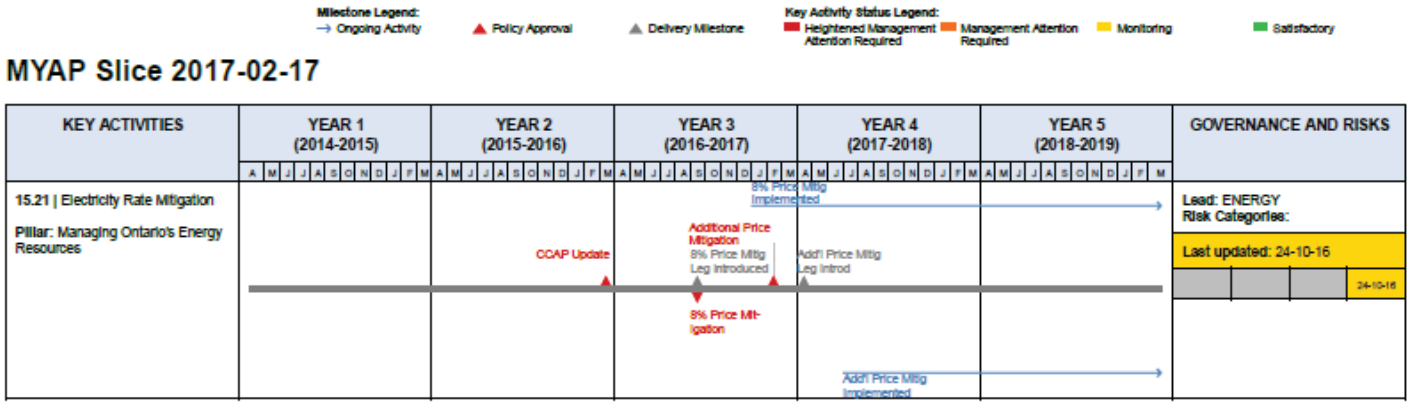
8. ENERGY report to LRC and Cabinet in winter 2017 with legislative amendments to implement the above initiatives, as necessary.

9. ENERGY to report back to LRC and Cabinet for approval of any supporting regulations and complementary regulatory amendments in winter 2017.

10. ENERGY and MOF work with the Premier's Office and the Cabinet Office on the development and implementation of an integrated communications strategy.

APPENDIX A: Multi-Year Action Plan

Below is an extract taken from the MYAP which demonstrates the overall strategic plan for the initiative that this policy submission supports. This excerpt represents the approved plan to date, and may not reflect the specific policy and delivery timelines identified in the Cabinet Minute above.



Rate Mitigation (ENERGY) - Appendix - Cabinet - March 1 2017.pdf

Electricity Price Mitigation – Appendix

Ministry of Energy

March 1, 2017

Electricity Bonds - Asset Securitization Transactions in U.S.: Long Island Power Authority and Duke Energy

	Long Island Power Authority (LIPA)	Duke Energy
Key Terms	Up to $4.5 billion, in one or more series/tranches, with maturity no longer than 30 years. Fixed interest rates for each tranche. Estimated net present value savings to ratepayers from securitization: $446 million.	$1.283 billion plus bond issuance costs, in one or more series/tranches, with maturity up to 23 years. Fixed interest rates for each tranche. Estimated total savings to ratepayers from securitization: $708 million.
Bond Issuer	Special-purpose “public benefit” corporation created by statute.	Wholly owned “limited liability corporation” (structure not available in Ontario) of investor-owned Utility.
Covered Costs	Outstanding debt arising mostly from the closing of Shoreham nuclear power plant.	Costs from early retirement or abandonment of nuclear power plants and ongoing financing costs.
Collateral Property	Revenues from usage-based “transition charges” (part of delivery charge) on all customer bills.	Revenues from usage-based Asset Securitization Charge (separate line item on all customer bills.
Covered Customers	All existing and future grid-connected customers; charges not by-passable.	All existing and future customers; charges not by-passable.
Issuance Approval Process	Financing order issued by LIPA setting out the amount and terms of bond. Public hearings must be held before order finalized.	Utility petitions for financing order from Florida Public Service Commission (FPSC), which sets out details of bond issuance, including amount and terms. Final structure of transaction reviewed by FPSC for limited purpose of ensuring all requirements of law and financing order are met.
Status of Bond	Not debt of the State, although State provides statutory pledge not to impair the value of the collateral property.	Not debt of the State, although State provides statutory pledge not to impair the value of the collateral property.
Governance of Bond Issuer	Board of Trustees appointed by Governor	“Bond team” is established by order of the FPSC, which is “visibly involved”.
Adjustment Mechanisms	“Transition charges” adjusted annually based on mathematical formula in financing order, to ensure charges are adequate for servicing the bond; transitions charges may increase or decrease depending on variations in consumption.	Mandatory biannual petition by Utility to FPSC to adjust charges for any over or under collection, based on mathematical formula provided in the financing order and estimates of consumption for each rate class.

CONFIDENTIAL CABINET DOCUMENT

IESO Memo

ieso
Connecting Today.
Powering Tomorrow.

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February 28, 2017

Deputy Minister Serge Imbrogno
Ontario Ministry of Energy
900 Bay Street
Hearst Block, 4th Floor
Toronto, ON M7A 2E1

Dear Deputy Imbrogno:

Attached are two documents prepared in conjunction with our KPMG advisors. The first outlines the proposed adoption by the IESO of the guidance in *ASC980 Regulated Operations* and the recognition of regulatory assets, as a more appropriate and transparent presentation in our financial statements.

The second is associated with the potential recognition and de-recognition of the regulatory assets associated with the IESO's role under the Global Adjustment Smoothing Account.

The conclusions of the second analysis are based on the structure of the account as the IESO currently understands it, and may vary depending on the final legislative materials.

We are available to address any questions you may have on these matters.

Sincerely,

Bruce B. Campbell

Attach.

Bruce B. Campbell
President and CEO
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White Paper - Adoption of the guidance in ASC 980 Regulated Operations

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issue being considered in this document is: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Background and Assumptions

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle

PS2120.02, "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government.*"

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

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(a) *the primary sources of GAAP; and*

(b) *the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."*

PS1150.19 *"Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances."*

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) *The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.*

(b) *The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.*

(c) *The continued relevance of the source — The passage of time may diminish the relevance of certain sources.*

(d) *The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."*

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."

PS3210.04 "Assets have three essential characteristics:

(a) *They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.*

(b) *The public sector entity can control the economic resource and access to the future economic benefits.*

(c) *The transaction or event giving rise to the public sector entity's control has already occurred."*

Issue: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. As mentioned in the Agenda ref. 9A of the IASB meeting of February 2017[2], rate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers.

[2] http://www.ifrs.org/Meetings/MeetingDocs/IASB/2017/February/AP09-Rate-regulated-Activities.pdf

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The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. For example, during the period from 2007 to April 2013 the IESO incurred costs relating to the Smart Meter Program amounting to $90.9 million, and these costs were expensed and are included in the accumulated deficit. In the absence of applicable regulatory accounting under PSAS, the IESO was unable to recognize a regulatory asset for this charge, despite receiving a rate order to recover it over the period from May 1, 2013 to October 31, 2018. Should the IESO choose to adopt ASC 980, a regulatory asset for the Smart Metering Charge would be recognized at December 31, 2016 for an amount of approximately $21.6 million, which would represent the remaining unamortized amount that would have been reported if the asset was recognized originally in 2013.

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities in Canada that prepare their general purpose financial statements in accordance with US GAAP (e.g. Hydro One and Ontario Power Generation), ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS (e.g. over 60 LDCs in Ontario), generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations*.

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC"), which reports under Canadian public sector accounting standards, recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

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"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the definition under ASC 980 of a regulatory liability, as the OEFC had no further obligation and should have reversed the liability into income. After consultation with the AG at that time, it was decided to amortize the gain over the remaining term of the contracts.

In summary

Rate regulated entities in North America reporting under US GAAP, ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix B for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*
   - *(d) Source uses a consultative process and deliberation when developing policies*

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

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(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

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Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether regulatory assets meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: *"The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits

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	future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50:

"The International Financial Reporting Interpretations Committee ("IFRIC") observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will

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recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Entities that are not eligible to elect to apply the requirements of IFRS 14 do not recognize regulatory assets because in 2009 the IFRIC determined they did not meet the criteria for recognition of an intangible asset under IAS 38.

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP*". FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

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Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

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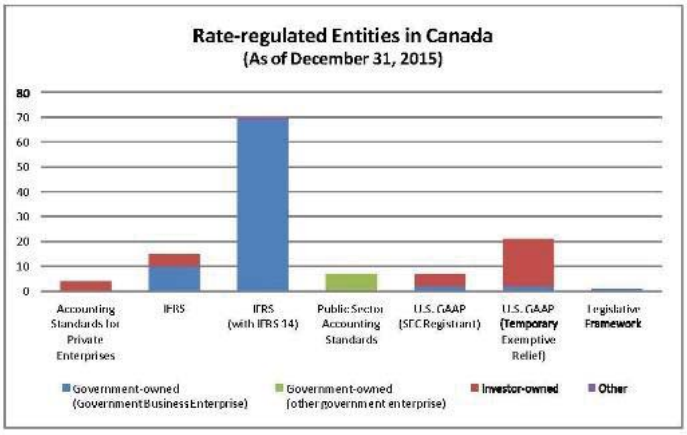
Appendix B:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

20. The chart above highlights two key points:

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(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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White Paper on the Province's proposed Global Adjustment Smoothing Account

Below is a summary of IESO's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account.

Understanding that the finalization of the legal terms, the financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Issues being considered in this document are:

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the Global Adjustment Smoothing Account upon sale to the OPG Trust?

1. Recognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment Smoothing Account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment Smoothing Account and the future recovery in rates charged to customers.

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

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8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.

9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle for issue #1

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 *"Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. 980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 *"Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: *"If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*

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- 980-350-50-1: *"In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: *"In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: *"The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation (see White Paper - Adoption of the Guidance in ASC 980 Regulated Operations). The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix A). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province`s books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met

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In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: The three criteria would be met.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment Smoothing Account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

2. Derecognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment Smoothing Account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #2

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "*... economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.*" [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 *"Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."*

.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms*

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and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 *"Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 *"If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the annual Global Adjustment Smoothing Account upon sale to the OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

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IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the receipt of cash from the OPG Trust.

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Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

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OPG Memo

ONTARIO POWER GENERATION

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
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cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately $2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

- restrict the risk to OPG;

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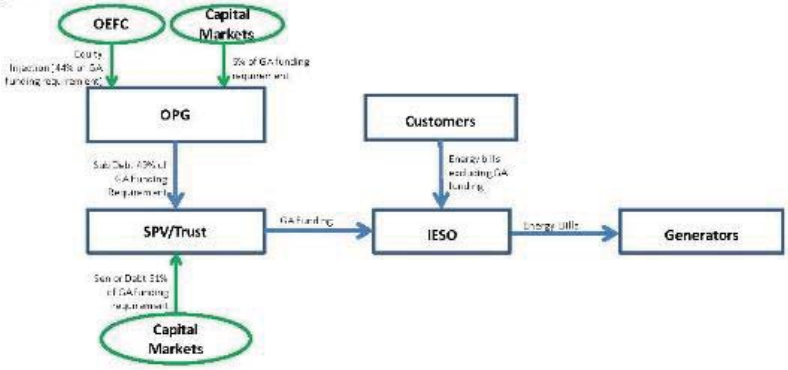
- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

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a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
- 51% senior secured debt from external markets
- 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

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Attachment 1 Legislative requirements to allow deferral of global adjustment amounts to be financeable

Attachment 2 Statutory amendments

The proposed financing structure for the SPV is:

	Risk Profile	Source	% of Total Funding Requirements
Tranche A Senior Debt	The least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt)	The most risky	OPG via OEFC	5%
		OPG via Capital Markets	5%

SPV structure is used to accomplish the following:

- SPV holds right to charge customers for the benefit of debt holders;
- Allows the financing vehicle to be ring-fenced from OPG as an SPV structure is set up as generally single purpose entities with no other operations that could add risk to the SPV, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings;
- Enables SPV to potentially get a higher credit rating than OPG;
- Supports consolidation with OPG provided accounting requirements are satisfied;

This approach supports a number of objectives of the GA Recovery Right:

- 51% external senior debt supports separation of the SPV from the Province
- 5% junior subordinated debt establishes OPG's "at risk" equity which supports separation of the SPV from the Province
- Subordinated debt provides flexibility to the financing structure and additional credit support to external debt holders
- Subordinated debt sourced from OPG (mainly funded by equity injection from the Province) minimizes impact on OPG credit metrics reducing risk of an OPG rating downgrade that could result in the SPV being consolidated directly with the Province as the SPV would be considered an arm of the Province.

Recent transactions used as precedents are:

Duke Energy Florida Project Finance LLC
June 2016
5 series of bonds totalling USD$1.3B
Weighted average life from 2 to 19 years with interest rates from 1.2% to 3.1%
Credit rating AAA

Utility Debt Securitization Authority
Sponsored by Long Island Power Authority
March 2016
Amount issued USD$0.6B
Weighted average life of 12 years and weighted average yield of 2.7%

August 2016
Amount issued USD$0.5B
Weighted average life of 7 years and weighted average yield of 2.0%

Credit rating AAA

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Cumulative outstanding (including previous issuances): USD$4.2B

D. External Assessment

Shakerhill Partners, an external advisor, identified the following items in an assessment of the structure and financeability of the structure:

- The structure is financeable however there are a number of significant risks to the structure:
  - Canadian and Ontario law does not provide the same protection to property right as exists in the US federal and state constitutions to limit the ability of governments to adversely impair contracts to the detriment of the holder;
  - Legislation could mitigate some of the risks – deferred recovery asset to be "uncapped", regular semi-annual true up to ensure recovery, Province provides sufficient committed liquidity to the IESO so that temporary shortfall in recovery does not affect payments to SPV, term of the deferral recovery substantially exceeds the longest maturity of debt of the SPV and that true-up mechanism take account of potential for currency, interest rate and duration mis-match between the debt of the SPV and the recovery mechanism;
  - Size of the program may be too large for Canadian securitization market requiring access to the US securitization market;
- Final maturity of debt should not exceed 30 years from inception of the program
- True up mechanism should be designed such that the forecast of recovery is less than 10% of the customer bill under downside scenarios to limit growth of the deferral balance as a higher portion of the customer bill increases the political risk to debt holders which could result in a lower credit rating and potential impact on financeability
- Securitized debt products are specialized and price at a premium to other fixed rate instruments however a successful program supported by a strong credit rating this premium could shrink over time to a minor spread over Provincial debt
- OPG's credit rating should be maintained provided sufficient equity is injected to maintain credit metrics
- While the structure is not expected to impact the Province there are risks that the program could negatively impact the rating agencies view of the Province's financial management.

E. Risk Summary

i. Consolidation

- Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the Province.

ii. Financeability

- The legislation establishing the structure and the property right for recovering the financing and associated costs may not be adequate for financing purposes resulting in more expensive financing or an inability to obtain the required external financing.

iii. Cost of Financing

- Future governments may enact legislation that changes the right of the SPV to recover amounts from customers.
- The right to recover amounts from future customers must be irrevocable and subject to full recovery from the government in the event that future governments reduce or eliminate the recovery. A legal structure that is weaker than the precedent US transactions increases the risk to debt holders and the cost of financing.
- Interest rates on bonds in the securitization market are higher than equivalent rated bonds. Rate for a AAA securitization credit is about 50 bps higher than GOC (rated AAA) for a 5 year term. This difference is attributable to the specialized structure of the bond, smaller investor pool for this bond, smaller size of the market and higher perceived risks of the bond.
- Any regulator involvement must not be seen to modify any terms of debt issued or the property right securing the debt as this would increase risk to debt holders.

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- It may not be possible to issue debt to match the terms of the deferred asset so shorter term debt would be used which raises risk to re-finance the maturing debt as the market may no longer be interested in this product. As well, underlying reference interest rates may be higher and the market may require a higher spread to invest in this product.
- With the GA Recovery Right program continuing for 10 years, debt issued over this period is subject to changes in both the underlying reference interest rates and appetite of the market for this product.

iv. OPG Credit Rating

- Minimizing the impact of significant additional debt on OPG's credit rating is dependent on higher EBITDA arising from earned income on the GA Recovery Right in excess of external debt. Ability of the SPV to record revenue reflecting the growth in asset value.
- Potential OPG credit rating downgrade if legislative structure is not adequate to support long term recoverability, inability to record revenue from growth in asset value or agencies view equity injection as debt.
- OPG credit rating downgrade could result in loss of GBE status or result in SPV being consolidated directly with the Province.

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Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

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all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset.

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require

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the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

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Attachment 2

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new):** New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

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Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

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the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

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- **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

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D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

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or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs."
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

  - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
  - the frequency of the OEB making determinations under this part of the regulation;
  - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

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- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

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BY E-MAIL & REGULAR MAIL

Mr. Patrick Monahan
Deputy Attorney General
Ministry of the Attorney General
720 Bay Street
8th Floor
Toronto, ON M7A 2S9

Dear Mr. Deputy Attorney General:

RE: Proposal to Reconfigure Global Adjustment Charges

You have asked for my opinion on the degree of constitutional risk if the government were to reconfigure the Global Adjustment Charge to residential and small business users so as to pay down the debt over 30 years instead of the current 20 year period. The 20 year period was designed to coincide with the duration of current contracts between ISEO and the relevant electrical generation companies. The 30 year period is the assumed useful life of 30 years of the relevant electricity generating equipment.

To the extent either the 1 to 20 year consumer group or the 20-30 year consumer group is subsidizing one or other, there will be a mismatch between the cost of facilities and those whom the facilities benefit, which may attract a constitutional challenge on the basis that the Global Adjustment has become a tax rather than a regulatory charge.

The degree of constitutional risk, in my opinion, is in direct proportion to the extent the government is **not** able to show a proper match between the cost of providing facilities

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for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.

The legal principles applicable to regulatory charges are quite straight-forward (although there is not much jurisprudence in the area). The hurdle for the government in any constitutional challenge will be to assemble credible expert evidence to demonstrate that (1) indeed the relevant electricity generating facilities *do* have a useful life of 30 years or more, subject to maintenance and refurbishment costs, and (2) that the allocation of the Global Adjustment aligns, to the extent practicable, with the costs and benefits of the electricity generators and avoids cross-subsidization of current consumers by future consumers.

In terms of Risk Assessment, I understand the government has not yet obtained an expert opinion from outside experts on the expected economic lifetime of the electrical generators now subject to the Global Assessment. I suspect there may be difficulty in obtaining such a comprehensive opinion from credible experts for the reasons discussed below. On that basis, I would assess the current proposal as **moderately high risk**, defined as being an outcome difficult to predict because there are good arguments on both sides, but in the end the Supreme Court of Canada would be more likely than not to find *against* constitutional validity.

If the government were able to assemble the necessary expert evidence, of course, the risk would be re-assessed at a lower level, but how much lower depends on the quality of the expert evidence and the extent to which the Global Adjustment is shifted, i.e. reduced

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to current consumers at the expense of the back end (20 to 30 year) consumers, who are assumed to be still benefitting from the current generating equipment.

Overview

The Global Adjustment Charge reflects all of the fixed costs, including capital costs, of Ontario's electrical generation facilities subject to 20 year contracts[1], as well as the premium paid to renewal energy producers and the cost of conservation programs (such as subsidies to small scale manufactures to replace inefficient equipment with more efficient equipment). In 2016, the Global Adjustment Charge, allocated in different amounts to different classes of consumer, stood at $12.3 billion dollars.

Much of the Global Adjustment was necessitated by substantial capital investment promoted by the Province with financial incentives to reduce greenhouse gas emissions and decarbonize and modernize Ontario's electricity infrastructure.

The Global Adjustment paid by consumers is a regulatory charge. Residential and small business users [class B consumers] pay the Global Adjustment based on the volume of electricity they use each month. One of the requirements of a valid regulatory charge (as opposed to a tax) is that the person paying the charge either benefits from the facilities that are subject to the regulatory scheme or they create the need for (and benefit from) those facilities in the future.

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[1] Most generators in Ontario are on 20 year contracts. Assets with longer operating lives are provided longer term contracts in recognition of their extended benefit. These longer term assets are not part of the current proposal.

Ontario

The Ministry of Energy is concerned that the present allocation of the Global Adjustment over 20 years is "*front*-end loaded" in that the consumers in the initial 20 year period are paying upfront for facilities that will still be utilized to provide electricity to consumers in the 20-30 period who will, to that extent, get a free ride. There is an equal and opposite concern that by shifting costs to the 20-30 year customers, the government may in reality be disproportionality *back*-end loading the Global Adjustment with the effect that the 20-30 year users will be subsidizing the 1-20 year users.

Accordingly, the Ministry of Energy anticipates a constitutional challenge based on the shifting of a portion of the existing Global Adjustment charges from current users to the 20-30 year group.

The judges can be expected to be aware of the difficult political problem of high energy costs in Ontario, and will therefore take a careful look at the government's evidence in support of the re-allocation of the Global Adjustment.

The Elements of a Proper Regulatory Scheme

In *Westbank First Nation vs. British Columbia Hydro and Power Authority*, 1999 [3 SCR] 134 at para. 30, the Supreme Court of Canada grappled with the distinction between a tax, a user fee and a regulatory charge. This was said to depend on:

> ...whether the levy's primary purpose is, in pith and substance; (1) to tax, i.e. to raise revenue for general purposes; (2) to finance or constitute a regulatory scheme i.e. to be a regulatory charge or to be ancillary or adhesive to a regulatory scheme; or (3) to charge for services directly rendered i.e. to be a user fee

In a regulatory scheme, as stated, the regulator is expected to align costs and benefits. While this can rarely be done with precision, and the courts will defer to some extent to

Ontario

the regulator's attempt to approximate a "smoothing out" of the allocation of the costs associated with the regulatory scheme, nevertheless a court would have to be satisfied that the regulator is attempting in good faith to match the cost of facilities with the class of consumers who will benefit from the generation capacity of those facilities, or whose energy needs have required their creation. As Gonthier J. stated in *Westbank* at para. 28:

> **Finally, the individual subject to the regulatory charge will usually either benefit from the regulation, or cause the need for the regulation:** *Magnet*, supra at page 459. In *Allard*, supra, the gravel trucks caused the need for the repair to the roads; in *Ontario Home Builders*, supra, the developers and the new homeowners caused the need for the new schools. In both cases, the individuals being charged also benefited from the regulation. (emphasis added)

A levy will be held to be **a regulatory charge** where there is:

(i) A complete, complex and detailed code of regulation;

(ii) A regulatory purpose which seeks to affect some behaviour;

(iii) The presence of actual or properly estimated costs of the regulation; and

(iv) A relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for, the regulation.

See: *620 Connaught Limited vs. Canada (Attorney General)*, 2008 SCC 7, 2008 1 SCR 132 While each of these four elements would have to be addressed in the evidence, the third and fourth elements can be expected to be the most contentious.

On the other hand, a levy will be held to be **a tax** if it is:

(i) Enforceable by law;

(ii) Imposed under the authority of the legislature;

Ontario

(iii) Levied by a public body;

(iv) Intended for a public purpose; and

(v) Unconnected to any form of regulatory scheme.

Re: Eurig Estate, [1998] 2 SCR 565 at paras. 15 and 43. The anticipated constitutional challenge is expected to argue that the Global Adjustment imposed on the 20-30 year consumers is a direct tax beyond the legislative competence of the Province.

The Estimated Costs and Useful Life of the Generating Facilities

(i) "Smoothing" the Charges Over 30 Years

The Global Adjustment would be funded by loans. The OPG or OPG Trust would need to borrow an additional amount each year equivalent to the shortfall brought about by the reduction in the Global Adjustment charge to current consumers. If for example the OPG Trust were to borrow $2.2 billion dollars in the current year, and transfer that amount to ISEO, the need to impose a Global Adjustment for 2017 would be reduced by that amount, and the charge to the 2017 consumer would be lowered. However, the shortfall will have to be recouped from future consumers to repay the loan. In other words, the total debt shifted into the 20-30 year period would be increased by a like amount (plus accumulating interest). The court would require an explanation of how the debt is created, financed, and allocated year by year to year 30.

Of course the lower the amount of Global Adjustment allocated in the early years, the higher the borrowings that will have to be paid off in subsequent years and the greater the need to demonstrate that consumers in those later years will still benefit economically and proportionally from the current generating equipment.

Ontario

In the figures I have been shown, the borrowings necessary to defray part of the Global Adjustment otherwise to be imposed on Ontario Consumers in years 1 to 20 would peak around the midpoint of the 30 year period and thereafter decline to zero.

(ii) Impact of Projections of Potential Reductions in the Cost of Generating Electricity in years 1 to 20

The Ministry of Energy has projected electricity demand over the 30 year period. It is noted that if energy demand in Ontario is not as great in year 25 as predicted, there will be fewer consumers paying higher electricity bills than anticipated. Equally, of course, there could be developments (a drop in the price of natural gas for example) that will reduce the actual cost of generating electricity (as represented in the wholesale "spot" market). Such forecasts are inevitably somewhat speculative over this period. Such speculation is **not** relevant to the Global Adjustment analysis, in my opinion, because the Global Adjustment will be paid *in addition to* the cost of generation, whether the cost of generation is eventually shown to be higher or lower than anticipated. Declining costs would not affect the Global Adjustment levy, but would bring the overall burden on the consumer in year 25 below the currently anticipated level.

(iii) Useful Life of the Assets Financed by the General Adjustment

I am asked to assume that the bulk of the electricity generating assets have a useful life well beyond 20 years, but if (as expected) there is a challenge to the provincial re-allocation of the Global Adjustment, the Province will of course have to call expert evidence on that point.

Ontario

It may be a very complicated calculus to address the relative useful lifetimes of different types of electrical generators including wind, solar and biomass. There seem to be a number of question marks in this respect. Renewable energy technology is advancing rapidly. Prices of solar panels, it seems, have dropped over 20% in the last year. How much will 25 year old wind turbine technology be worth in 2040? Who can say? Developers of solar and wind power are obliged to put in place a "decommissioning" plan backed up (at least in some cases) by a performance bond. It will have to be established that the decommissioning is not triggered at the conclusion of the 20 year FIT plan (and the use of the land then restored to landowners). Much of Ontario's renewable energy facilities may have little economic value to consumers in the 20-30 year period, even though still able to produce electricity inefficiently.

If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30 year period, thereby failing to justify the imposition of an amortization of current equipment cost over the extended 30 year period, or if the Global Adjustment Charge is in the opinion of the Court disproportionality backend loaded in light of that declining benefit to future consumers, the Global Adjustment will not qualify as a regulatory charge.

(iv) Impact of Choosing Option 1 (Residential Bills Lowered 25%), Option 2 (20%) or Option 3 (18%)

The choice of option is significant because the greater the reduction of bills to current residential consumers, the greater the debt load pushed onto future consumers, and the more the Ministry's 30 year projections will attract judicial scrutiny. I expect the

Ontario

Province's expert would have to concede that projections into the 20-30 year time frame are inherently speculative (as to the useful economic life of the current renewable energy technology for example).

The constitutional issue remains the same: can it be demonstrated that the Global Adjustment will match costs and benefits as closely as is practicable, and not operate as a cross-subsidy of present consumers, who are the source of considerable political pressure. Judges do, as we know, read newspapers. The more the debt load is pushed onto future consumers based on 20-30 year projections, the bigger the challenge to the Province's experts to satisfy a court that the reduction is based on sound economics and a realistic appraisal of the future value of the current electrical generation facilities. In short, the bigger the reduction in charges to current consumers, the greater the constitutional risk, in my opinion.

Conclusion

If it can be established that the underlying electricity generating assets have useful life-expectancies beyond the terms of their 20 year contracts, with the result that future consumers whose electricity needs require the existence of the electricity generating infrastructure put in place in the initial 1 to 20 year period, and who will benefit from the existence of that capacity, I believe a Court would, in those circumstances, conclude that the consumers in the 20 to 30 year period could constitutionally be required to share equitably and proportionately in the cost of financing the required assets.

The challenge, in my view, is not with establishing the legal principles. The problem will be to find leading experts to convincingly establish the necessary facts.

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I would be glad to expand on this analysis or respond to any questions.

Yours truly,

Hon. Ian Binnie, C.C., Q.C.

IB/pc/kb

Ontario

EY request GAM Apr3 .pdf

Call up to EY under contract:
TBS-OTB-OPCD-16

Date:
April 4, 2017

Required response time: (provide details as applicable)
Within approximately 2 weeks of original communication

Nature of request: (click all that apply)

- ✓ Accounting standards research / analysis
- ☐ Comments on memo prepared by OPC
- ☐ Prepare draft memo
- ✓ Other (advice on documentation provided)

Format of response: (click all that apply)

- ✓ Call / discussion
- ☐ Informal written response / email
- ✓ Comments on document(s) provided by OPC
- ☐ Formal written response on EY letterhead
- ☐ CPA Canada s.7600 report (**note that if this is selected, this will require a separate contract, SOW and/or RFS**)
- ☐ Other (TBD)

DRAFT

Issue / Background Information:

The Office of the Provincial Controller is seeking feedback from E&Y in regards to a complex series of planned transactions related to the Province's recently announced electricity rate relief initiatives.

The most sign cant component of the initiatives relates to deferral of a portion of Global Adjustment Mechanism related costs for recovery in future periods. In this component, the IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to a Trust/SPV established by OPG in return for cash proceeds. The Trust/SPV would purchase this asset with financing obtained from two primary sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

Key accounting considerations have been assessed by advisors to IESO and OPG. Whitepapers from each of the external advisors were attached to the Cabinet Submission. Supported by analysis documented in KPMG's whitepaper, the following extract from Note 3 to the IESO's 2016 audited financial statements (full IESO f/s attached below) provides further context to the changes in the IESO's accounting policies, compliant with PSAS:

As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit.
As a result of the change, the IESO recognized two regulated assets: 1) unrecovered smart metering expenses and 2) unrecovered PSAB transition items. The smart metering expenses result from the IESO's role as the Smart Metering Entity. As such, the IESO funds its SME operating costs and capital investment in the meter data management/repository (MDM/R) through fees from users of smart meters in Ontario. The OEB approves the Smart Metering Entity charge and the charge is intended to cover the costs of developing and operating the MDM/R.
The unrecovered PSAB transition items result from the IESO's adoption of Canadian public sector accounting standards effective January 1, 2011. The adoption of PSAB was accounted for by retroactive application with restatement of prior periods subject to the requirements in Section PS 2125, *First-time Adoption by Government Organizations*. The corresponding change to pension and other postemployment benefits resulted in previously unrecognized actuarial losses and past service costs of $80,617 thousand at the date of transition.

In addition, as of January 1, 2016, the IESO changed its accounting policy regarding the recognition of market accounts assets and liabilities on the statement of financial position. The change was made to better reflect the assets and liabilities and amounts due to and from market participants held by the IESO on behalf of the IAM at year end. This change was applied retroactively and has increased amounts previously unrecorded for market accounts assets and liabilities. There is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

The OPG Whitepaper provides an overview of key accounting considerations associated with the series of transactions, referencing both anticipated accounting treatments for the IESO as well as OPG. From Provincial reporting perspective, IESO is consolidated on a line by line basis under PSAS and OPG is a government business enterprise which is consolidated on a modified equity basis.

The OPG Whitepaper reflects the key accounting consideration which is OPG's ability to recognize an asset and record revenue related to the deferred GA amount which would be held by the Trust/SPV. It should also be noted that as of April 1, 2016, the Province's consolidated financial statements reflect the results of OPG on an IFRS basis; therefore, the relevant accounting analysis reflects the impact on OPG's (and the Province's CFS) on an IFRS basis. The following extract is from the attached OPG whitepaper:

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Ability to Recognize an Asset and Record Revenue

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:

- The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
- The SPV must have the control and power to obtain future economic benefits from the intangible asset.
- The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

(Note: Legislation related to the GA deferral is currently being drafted, and will impact the final accounting analysis from both an IESO and OPG financial reporting perspective.)

Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
   - The SPV
   - Any of OPG's investments

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Facts & Circumstances:

See accounting analysis appended to Cabinet Submission. See also the attached IESO financial statements (note 3 reflects changes to accounting policies).

IESO Statutory Statements - 2016.pc

Copy of draft legislation outstanding.

Preliminary Views/Desired Outcomes (if any):

OPCD is requesting feedback from E&Y to confirm the anticipated accounting treatment on the Province's consolidated financial statements, based on line-by-line consolidation of IESO and modified equity consolidation of OPG.

DRAFT

From:	Suzie Gignac
To:	Virani, Shyrose (TBS)
Cc:	Blake Langill
Subject:	RE: Request for deadline extension - RFS for complex accounting services
Date:	April 26, 2017 3:56:03 PM
Attachments:	image001.gif

That is greatly appreciated.
Thank you,
Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.
99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada
Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com
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From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, April 26, 2017 3:55 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Blake Langill <blake.w.langill@ca.ey.com>
Subject: RE: Request for deadline extension - RFS for complex accounting services

Hi Suzie:

At the most we can give you one week extension i.e. Friday, May 5, 2017. Please confirm.

Thanks
Shyrose

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: April 26, 2017 1:48 PM
To: Virani, Shyrose (TBS)
Cc: Petsche, Nadine (TBS); Blake Langill
Subject: Request for deadline extension - RFS for complex accounting services

Hi Shyrose:
With respect to the RFS for complex accounting services related to Electricity Sector Entities currently due April 28, 2017, we would like to request an extension to the deadline to Friday, May 12, 2017.
Thank you,
Suzie

Suzanne Gignac, CPA, CA
Ernst & Young LLP
613 598 4376

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Date: April 26, 2017 3:54:00 PM

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Request for feedback (time sensitive).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Request for feedback (time sensitive)
Date: Tuesday, April 11, 2017 13:23:28
Attachment 1: TOR_2528-#23107566-v9-_Fair_Hydro_Act_ (2).DOCX

Suzie/Blake/LeeAnne,

Further to our discussion on Friday, we have received the updated draft Legislation for the Fair Hydro Act. It will continue to evolve, but is on a tight timeline, so we would appreciate your feedback on the currently envisioned model and any potential accounting risks from your perspective.

An important regroup of key stakeholders is planned for tomorrow afternoon, so if we can get your comments (concerns mainly) by tomorrow am it would be greatly appreciated.

Please direct your comments to both Cindy and myself.

Thanks.

Nadine

TOR_2528-#23107566-v9-_Fair_Hydro_Act_ (2).pdf

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs

Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> “Absolute Assignee” means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> “Actual” means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> “Additional Funding Charges” means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute

Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services

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[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or in its stead, by an Alternative Servicer), by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any

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[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other

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[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their

own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative

Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

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[10] Mirror collection “standard of care” under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – On each Settlement Date[13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] This is in anticipation of a possible future restructuring of the distribution system.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity

[15] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]

(14) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the

[16] Consider adding or substituting this provision for a right to appoint a receiver.

Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and

the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

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[17] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]

(1) Adoption of the Fair Allocation Plan – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future

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18 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) Replacement of the Administrative Agent – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) Obligation to Apply IESO Remittances – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article 10 – Compliance Matters[19]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG

[19] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article 11 – Undertaking of the Lieutenant Governor in Council[21]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[22]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23]

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[22] Requested by Torys. For discussion.

[23] OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

Response to RFS TBS-OTB-OPCD-21.rtf

From: Blake Langill [blake.w.langill@ca.ey.com]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Fred Clifford [fred.clifford@ca.ey.com]
Subject: Response to RFS TBS-OTB-OPCD-21
Date: Friday, May 05, 2017 16:51:50
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: EY Submission RFS TBS-OTB-OPCD-21 - Main Submission.pdf
Attachment 4: EY Submission RFS TBS-OTB-OPCD-21 - Pricing Supplement.pdf

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Thank you very much for allowing us to respond to your RFS. Please find attached our response; as per the instructions, we have separately attached the pricing supplement.

Please let us know if you require anything further.

Best regards,

-blake

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Blake Langill | Partner

Ernst & Young LLP

222 Bay St., P.O. Box 251, Toronto, ON M5K 1J7, Canada

Office: +1-416-943-3556 | blake.w.langill@ca.ey.com

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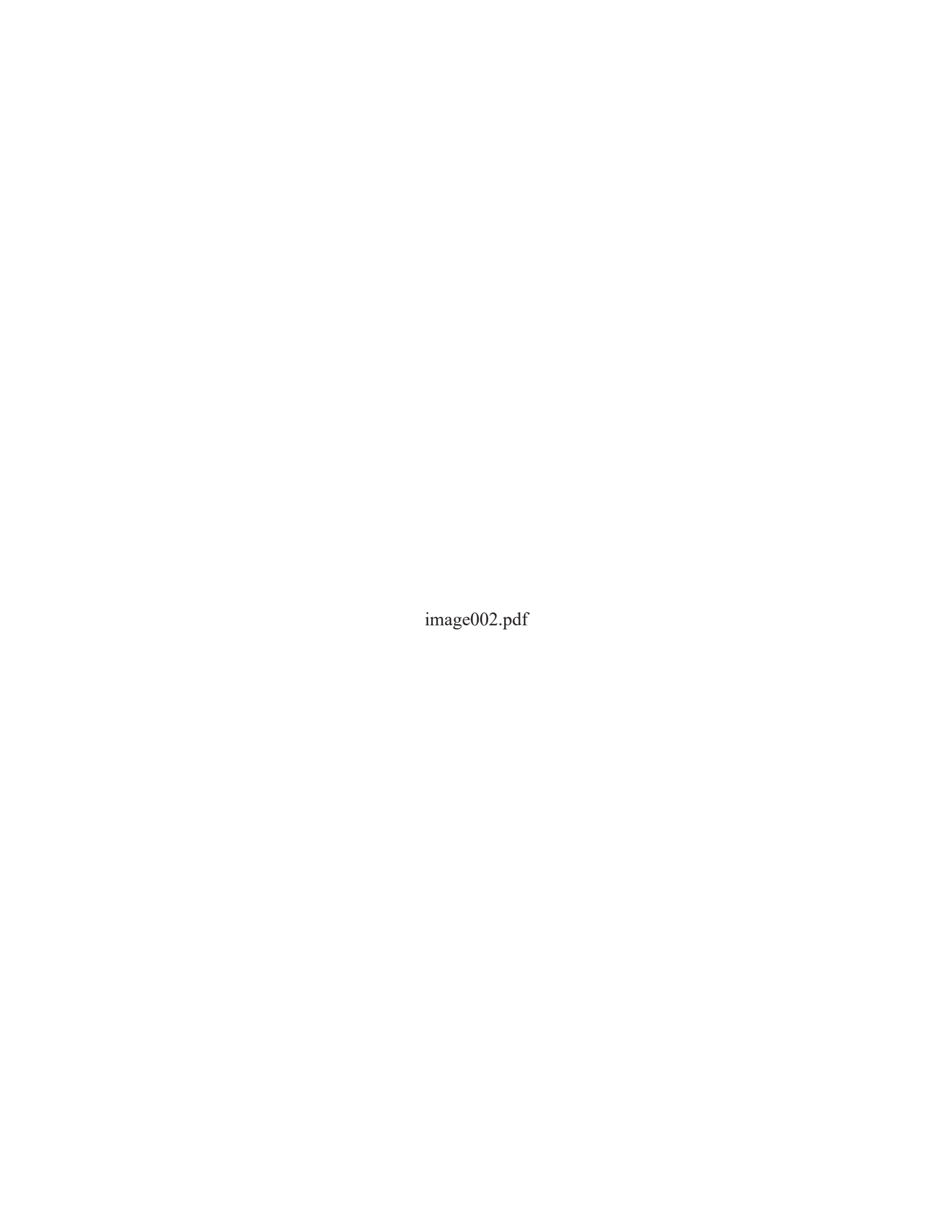
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NEW TORONTO OFFICE
as of 23 May

EY Tower
100 Adelaide St. W
Toronto, ON M5H 0B3

EY Submission RFS TBS-OTB-OPCD-21 - Main Submission.pdf

Treasury Board Secretariat,
Office of the Provincial Controller

Complex Accounting Services related to Electricity Sector Entities

Response to RFS TBS-OTB-OPCD-21
VOR # OSS-00426611

May 5, 2017

Response Submission

Prepared for

Nadine Petsche, Director
Accounting Policy and Financial Reporting Branch
Nadine.Petsche@ontario.ca

Submitted by

Ernst & Young LLP
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May 5, 2017

Nadine Petsche, Director
Accounting Policy and Financial Reporting Branch
Treasury Board Secretariat
Office of the Provincial Controller

nadine.petsche@ontario.ca

Re: Request for Complex Accounting Services related to Electricity Sector Entities

On behalf of EY, we appreciate the opportunity to submit our response to Treasury Board Secretariat's (TBS) request for services to provide complex accounting advice and analysis related to electricity sector entities. TBS is an important and valued client to our firm and we are excited about working with the Accounting Policy and Financial Reporting Branch on this important initiative.

Included as Attachment A is a summary of our qualifications as well as a discussion of our approach to communications, reporting and knowledge transfer as well as contingency planning. Attachment B is our Submission Form and Attachment C contains our resumes together with references. Provided separately is our Pricing Schedule.

While Lee Anne Probert will be our Senior Consultant / Project Lead and your main point of contact, as the engagement partner and senior advisory partner, we will be fully responsible for the successful completion of this engagement, including engaging appropriate firm resources, supervising our service delivery, and monitoring the results of this engagement. If you have any questions regarding our experience, references, or other components of our proposal, please do not hesitate to contact us.

Sincerely,

Ernst & Young LLP

Suzie Gignac
Engagement Partner
(613) 598-4376
suzie.r.gignac@ca.ey.com

Fred Clifford
Engagement Partner
(416) 943-2489
fred.clifford@ca.ey.com

IN THE EVENT YOU RECEIVE AN ACCESS TO INFORMATION OR FREEDOM OF INFORMATION REQUEST THAT COULD REQUIRE DISCLOSURE OF OUR PROPOSAL (OR ANY OTHER INFORMATION PROVIDED BY US IN THIS CONTEXT) PLEASE IMMEDIATELY NOTIFY US SO THAT WE MAY AVAIL OURSELVES OF ANY AVAILABLE PROTECTIONS OR EXEMPTIONS UNDER THE APPLICABLE LEGISLATION. OUR PROPOSAL IS BEING PROVIDED TO YOU IN CONFIDENCE AND INCLUDES COMMERCIALLY SENSITIVE INFORMATION, THE DISCLOSURE OF WHICH, AMONG OTHER THINGS, MAY SIGNIFICANTLY PREJUDICE THE COMPETITIVE POSITION OF EY OR BE OTHERWISE HARMFUL TO OUR BUSINESS INTERESTS.

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"EY" AS USED IN THIS PROPOSAL MEANS THE CANADIAN FIRM OF ERNST & YOUNG LLP OR, AS THE CONTEXT REQUIRES, OTHER MEMBER FIRMS OF THE GLOBAL EY NETWORK, EACH OF WHICH IS A SEPARATE AND INDEPENDENT LEGAL ENTITY.

Attachment A – Our Qualifications

Background and Approach

Given the importance of government and public sector activities in Canada, we have full-time professionals dedicated to serving clients in the public sector and have extensive experience in helping clients deal with complex accounting issues that need to be considered in the context of various financial reporting frameworks (in particular, with PSAS, IFRS, US GAAP, ASPE).

EY's Financial Accounting Advisory Services is a unique group of highly qualified specialists dedicated to providing accounting and regulatory assistance on complex technical issues to clients. The group is comprised of over 50 full time team members in offices located in across Canada. The team members have deep technical expertise in a variety of topics and in monitoring new business, industry and regulatory developments. They are well positioned to provide in-depth research and advice on specialized topics under various accounting standards and to equip our clients with the most up-to-date knowledge. They are experienced in interpreting accounting standards and evaluating accounting alternatives.

We have found through our relationships with, amongst others, the Offices of the Provincial Controller, the Auditor General of Canada and the Auditor General of Alberta that despite being in the public sector, the accounting challenges that arise often are not specifically related to PSAB standards. As such, our proposed team includes individuals who have worked extensively in EY's Financial Accounting Advisory Services group, advising audit teams and external clients on the appropriate accounting treatment of a variety of transactions under IFRS, US GAAP, ASPE and PSAS. This work involves reviewing and preparing analyses, evaluating complex accounting issues, and providing recommendations thereon. The expertise of these individuals spans a broad range of industry groups and accounting topics, and – importantly for you – the team collectively has significant experience working in the power & utilities sector. We specifically highlight Fred Clifford, one of our two engagement partners for this project, who has significant relevant experiences having been involved in the last major restructuring of the energy sector when Hydro One and OPG were created and has worked with most of the major utilities in Ontario.

The skill set that our firm possesses in the public sector sphere is highlighted by the prior secondment of Suzie Gignac (our proposed engagement partner) to the Office of the Comptroller General, Treasury Board Secretariat within the Government of Canada. She held the role of Executive Director, Government Accounting Policy and Reporting for over two years and was responsible for complex accounting related to the Public Accounts of Canada including transactions such as Spectrum license revenue, pension accounting, automotive loans and investments and transfer payments related to the Economic Action Plan. In her role at the Treasury Board, Suzie was actively engaged in discussions related to the accounting implications of departmental and Crown Corporation transactions as well as the federal budget and Suzie was the primary liaison with the Office of the Auditor General related to the audit of the Public Accounts of Canada. Suzie was a member of the Assets task force of the Public Sector Accounting Board and is currently on the Advisory Committee for the annual PSAB conference and is in frequent discussions with government officials, practitioners and other stakeholders on the financial reporting challenges faced by entities in the public sector. As the engagement partner for this project, she is perfectly positioned to provide you with up -to-date thinking on trends and opportunities on how best to deal with the challenges of financial reporting facing the Public Sector.

To ensure we properly manage the vast resources at our disposal, we have designated Lee Anne Probert as your dedicated key contact in her role as the Senior Consultant / Project Lead. As the dedicated key contact, she will be responsible for coordinating our accounting advisory services to you; confirming that all project deliverables are met; and monitoring the quality of our service delivery. She will be supported by Mita Meyers,

Senior Manager in Assurance practice who has had experience both with utilities companies (leading the Hydro Ottawa audit engagement) and with Public Sector accounting. She will also act as engagement lead and be responsible for overseeing the day-to-day activities and ensuring that assignments are progressing according to plan. In the event that Lee Anne is not available, both Suzie Gignac (the project's engagement partner that brings significant PSAS skills) and Fred Clifford (the project's engagement partner that brings significant electricity sector skills) will be available to you to ensure that there is no loss in our responsiveness or quality of services we provide you. Lee Anne has been chosen as your dedicated key contact because it is expected that in most cases she will also have the technical knowledge required to immediately provide answers to you or to seek out the appropriate resource, whether it be specific to the power & utilities industry or to the public sector. In addition to the team noted above, we will also have Blake Langill and Ivan Chittenden, partners in our assurance practice who both have experience working with OPCD and/or supporting our project teams on complex accounting issues and Mita Meyers who has extensive experience with Public sector clients. All of Lee Anne, Suzie, Blake and Ivan are known to you from our prior engagements with you and Fred and Abbas, while new to OPCD, have worked closely with Lee Anne, Blake and Ivan on many engagements and Fred and Mita have worked together with Hydro Ottawa.

You can be assured that our core team is also able to draw on the other resources of our firm to provide additional knowledge and insight as warranted.

Our approach to providing you with advice in respect of your accounting issues is as follows:

- *Understanding your needs and co-developing expectations*
  Recognizing that specific questions or issues could span a range of topics, be of differing size and have varying degrees of impact, it is critical for us to understand your needs at the very outset of the engagement. We will meet immediately with the appropriate representatives to discuss the nature of the assignment and the technical topics involved, your goals and objectives, goals and objectives of other stakeholders, degree of involvement of your staff, availability of resources, location of resources, timeline and deadlines, documentation requirements and communication protocols. The co-development of expectations will facilitate a clear understanding of your objectives and minimize the time spent on non-productive activities, as well as facilitate the alignment of our services and resources with your expectations, and enhance the benefits of the services we deliver.
- *Available Resources*
  EY understands your business imperatives. For the on-demand accounting services being offered, our firm has the depth and breadth of resources necessary to carry out the range of services described in the RFS.
- *Timely Response*
  EY understands that our clients have business needs that may require engagements to be started and completed on very short notice with tight deadlines. As part of our commitment to quality, EY strives to respond to these resource requests as expeditiously as possible. We will respond to your requests within one business day to understand both the issue at hand and the next steps, with the purpose of answering your questions quickly and effectively. For many requests, the core team will have the knowledge required to immediately provide answers to you. In all cases, we will clearly understand your timeframe and work to provide a clear and carefully considered response upon which you can rely.

As noted above at the start of the project, we propose to review and agree with you to determine the appropriate on-going reporting protocol that will be best suited for the engagement. For example, we would propose regular and scheduled meetings, weekly or bi-weekly, in person, be held to confirm that all information flows back and forth effortlessly between the project authority and EY engagement team. Standard short status reports combining graphics and text would be used to monitor and document progress, identify and capture issues and resolutions. We would also propose that the engagement partner and/or senior advisory partner meet with your project authority for a formal review at least once a month.

As with all advisory projects, we would also propose to formalize within the first couple of weeks of the start of the assignment a deliverable acceptance protocol. This protocol would specify the nomenclature of various work products, expected turn-around for review, authority to approve, format, draft vs. final etc. to confirm that they meet your quality requirements.

To ensure that there is as much knowledge transfer as possible, Lee Anne will ensure that all memos, analysis and research is shared with your team and that your team has a sufficient understanding of the concepts and analysis contained therein.

Our specific qualifications

EY has extensive experience in helping clients deal with complex accounting issues.

We are currently engaged by the OPC to provide accounting advice on various complex accounting issues as they arise including transactions related to the energy sector and have previously been engaged to provide accounting advice on various complex accounting issues relating to a potential divestiture, with respect to pension accounting and relating to the Province's financial assistance to the auto industry. We believe that our current engagement as well as the success of the engagement related to the potential divestiture are excellent examples that EY can work effectively with the OPC to provide timely and pragmatic advice on complex accounting issues as they arise. The latter of these two engagements included consideration of issues related to the impact of the proposed transaction on the current and future deficit of the Province. It involved a consideration of then PSAB and CICA private sector accounting principles as well as U.S. public sector accounting literature. As part of this assignment, we supported the OPC in preparing for discussions of these complex issues with the Auditor General of Ontario and participated directly in certain discussions with the Auditor General. Ivan Chittenden was responsible for the execution of this engagement and will continue his relationship with OPC as an additional partner resource for the services contemplated by this proposal.

We provide complex accounting advice on an on-going basis in connection with the execution of our financial statement audits and specifically for clients within the power & utilities sector. Our clients over the years have consisted of a number of entities that fall within the public sector such as Hydro One, Toronto Hydro, Hydro Ottawa, Hydro Quebec and Ontario Power Generation and those in the private sector such as Brookfield Renewable Partners, Algonquin Power, Enwave, Fortis, Just Energy and Northland Power.

In recent years, EY has provided extensive advisory services relating to the power & utilities sector specifically. For example, our IFRS advisory services have included the preparation of diagnostic reports that outline differences between ASPE or US GAAP and IFRS, the preparation and review of policy papers on complex accounting issues; discussions, meetings and presentations to clients on complex accounting issues; and training provided to clients on several accounting topics. These services have been provided to audit and non-audit clients, and to both public and private enterprises. Specific examples include: Hydro One, Hydro Quebec, Hydro Ottawa, Toronto Hydro, Ontario Power Generation, Enwave and Northland Power.

We also have long-standing relationships with both the Office of the Auditor General of Canada and the Office of the Auditor General of Alberta to provide on-call accounting advice. These services have generally focused on financial instruments, derivatives, hedging, securitization, leasing and foreign exchange. The renewal of these engagements over a number of years is further evidence that we have the right skills to effectively service the on-call accounting needs of a client in the public sector. As well, in late 2012 / early 2013 we assisted Infrastructure Ontario with their implementation of PSAS 3450.

As noted earlier, the skill set that our firm has developed in the public sector sphere is highlighted by the secondment of Suzie Gignac to the Office of the Comptroller General, Treasury Board Secretariat within the Government of Canada. We believe that the experience she gained in this role, in particular her responsibility for complex accounting matter related to the Public Accounts of Canada, will make her very relevant as

engagement partner on our team and will allow her to provide valuable insights to OPC. In addition, Mita Meyers has worked at Office of the Auditor General (OAG) in the prior years and is currently leading joint audit engagements with the OAG having worked with both IFRS and PSAS frameworks leading complex accounting issues such as transition to IFRS 9 (the new financial instrument standard).

However, in ensuring that you receive the best possible service from us on this project, it is our ability to bring Suzie's background together with the significant power & utilities experience of Fred Clifford that will be a differentiator for you. Further, both of them will utilize Abbas Lakha's industry experiences and the dual PSAS / power & utilities experience of Lee Anne Probert, Blake Langill, Ivan Chittenden and Mita Meyers to ensure that issues can be considered and skills utilized from all three angles – PSAS, private sector GAAP (i.e. IFRS and/or US GAAP) and industry specific issues.

In addition to the experience as outlined above, EY has created proposals and made presentations to senior executives and other stakeholders on complex accounting issues. This experience includes the provision of services to the public sector, for example to Infrastructure Ontario as part of their adoption of PSAS 3450 and to the City of Toronto on new capitalization of asset rules.

Over the years, many of our partners and staff have also assisted the Office of the Auditor General of Canada in the conduct of the audit of the Public Accounts of Canada (PAC). Members of the team have also conducted the audit of the Bank of Canada for many years, CMHC, CORCAN and a number of other entities included in the PAC perimeter.

EY has advised clients in both the private and public sector on the accounting impact of acquisitions and divestments and accounting in the power and utilities sector. This includes accounting issues relating to mergers, spin-offs, carve-outs and purchase price equations.

In terms of government transactions, EY was previously engaged to advise the OPC on a confidential transaction relating to a potential government divestment. Our services included an analysis and evaluation of whether there is scope to structure the transaction so as to achieve sale treatment. EY was also involved in the transactions resulting in the separation of both Ontario Power Generation and Hydro One from Ontario Hydro.

In EY's on-call accounting engagements, our evaluation of a complex accounting issue or transaction will often include the implications of decisions on financial reports, budgets and appropriations. For example and as noted earlier, EY was engaged to advise OPC on a confidential transaction involving a potential government divestment and a component of this project includes an evaluation of the consequential impact on the Province's financial statements, including the impact on the Provincial deficit.

Additionally, when providing complex accounting advice in connection with the execution of our financial statement audits, consideration is always given, where appropriate, to the implications on the Province's financial reports, budgets and appropriations. The services provided by EY to the Office of the Auditor General of Canada include reviews of complex financial statements, the interpretation of new standards and the provision of examples of best practices in financial reporting.

The following table summarizes our proposed professionals' accounting standards knowledge and expertise (more details of these individuals are contained in their resumes which are contained elsewhere in this document).

Resource name and role	PSAS	IFRS	US GAAP	Electricity Sector
Suzie Gignac Engagement Partner	√	√		
Fred Clifford Engagement Partner		√	√	√
Lee Anne Probert Senior Manager	√	√	√	√
Mita Meyers Senior Manager	√	√		√
Abbas Lakha Manager		√	√	√
Ivan Chittenden Partner	√	√	√	√
Blake Langill Partner	√	√	√	√

Pricing

We have provided the following information.

In order to arrive at our Pricing Supplement submission (included separately), we have applied the following hourly rates based on the EY-specific roles of the individuals:

Partner	$450
Senior manager	$375
Manager	$200
Staff	$150

For the purposes of the Pricing Supplement, based on our experiences with other longer term on-call accounting advisory engagements that included a high degree of complex accounting issues, we have assumed a staffing mix as follows:

Partner	15%
Senior manager	40%
Manager	35%
Staff	10%

We have quoted the same rate for each role specified in the RFS as we believe that the specific level of the team member(s) providing the services will be a function of the specific issues raised.

Contingency Planning

You are an important client for our firm. We are committed to continuing to build upon our existing relationship. We have successfully maintained the core resource team during the lifecycle of our previous projects with you, where all proposed team members remained active for the entire duration of the engagement. Throughout the engagement we will confirm there is adequate staff allocated to the project. Through this process, we will confirm continuity with the Engagement Partner and other team members for the duration of the assignments during the course of the term of the engagement and, to the best of our ability, we will allocate work to allow the same project team to work on our deliverables.

EY also understands the need for a flexible workforce that can readily respond to the changing needs of our clients and their projects. While our core team of resources is prepared to undertake the work as presented in this proposal, EY is also prepared to supplement resource deficiencies identified within our team to complete this project in accordance with the agreed upon project schedule. EY has a large pool of qualified and experienced professionals to replace any team changes over the period. In addition, EY has included a number of senior resources on the team to be available to share knowledge and guide the other team members and to mitigate any loss of continuity/knowledge on the engagement. If there is transition, the senior members of the team will transfer knowledge and support a smooth and seamless transition for you.

If proposed resources are unavailable for reasons outside of EY's control, or if additional resources are required to deliver the work steps within the proposed timeline, we will work directly with you to approve replacement/additional resources who meet the required experience standards.

We strive to ensure continuity on all of our engagements as there are tangible benefits to you. We have been very successful in maintaining staff continuity in past years, from the Partner level down to the staff level. We commit to providing staff continuity within our control to this project and to proposing fully qualified resources to you within five days of a request for a replacement resource. Our internal resource management system provides us with real time information on our staff assignments. This system will be used to forecast and schedule staff in a timely manner and to provide up-to-date information on staff changes and reallocations to meet your needs.

Effective issue management is a critical success factor for the management of challenges that are experienced during the project life cycle and allows for the following:

- A visible decision-making process
- A means for reaching consensus on questions concerning the project
- A project documentation trail

As necessary, an issues log will be maintained to log and track issues by Lee Anne, with the support of her manager, Abbas Lakha. All team members will be responsible for pro-active identification, documentation and resolution of issues. Open issues will be reviewed during project status meetings and escalated, if needed, to the appropriate resources within your organization.

If during the course of the project, an issue is identified by either party, the issue will be raised to Lee Anne. She will discuss the issue and propose a resolution with you. Should the issue not be satisfactorily addressed or resolved, it will be raised to Suzie Gignac and/or Fred Clifford, who will confirm that the issue is resolved to your satisfaction.

EY is committed to delivering timely, quality engagements that meet your business objectives. We will communicate swiftly and openly with you on significant issues as they arise. We are committed to maintaining open two-way communication so that feedback and recommendations can flow between our two organizations to maximize efficiencies to the benefit of both organizations. We will establish planning meetings and regular

status meetings throughout the process with management to establish a clear understanding of your expectations and service delivery requirements, including communication protocols.

However, the ultimate mix of individuals that will be utilized in providing these services to the OPC will be a function of the complexity of the issues and thus the level of expertise or specialized skills required of the individuals.

Attachment B – Submission Form

SUPPLEMENT B - SUBMISSION FORM

Request for Services Number: TBS-OTB-OPCD-21

To: HER MAJESTY THE QUEEN in right of Ontario as represented by President of Treasury Board

1. Vendor Information

(a) The full legal name of the Vendor is:

Ernst & Young LLP

(b) Please identify any other relevant name under which the Vendor conducts business:

Ernst & Young
EY

(c) The Vendor's address, telephone and facsimile numbers are:

Ernst & Young LLP
Ernst & Young Tower
222 Bay St.
Toronto, ON
M5K 1J7

Tel: 416-864-1234
Fax: 416-864-1174

Please be advised that effective May 23, 2017, all references to the above address should be replaced with the following:

Ernst & Young LLP
EY Tower
100 Adelaide St. W.
Toronto, ON
M5H 0B3

(d) The name and title of the Vendor's Representative:

Ivan Chittenden, Partner

(e) The mailing address, phone number and e-mail address of the Vendor's Representative:

Ernst & Young LLP
Ernst & Young Tower
222 Bay St.
Toronto, ON
M5K 1J7

Tel: 416-943-3110
Email: Ivan.Chittenden@ca.ey.com

(f) State the name, address, telephone and facsimile numbers and e-mail address of the Company Security Officer (CSO) for the Vendor:

Laarni Tansingco

Ernst & Young LLP
Ernst & Young Tower
222 Bay St.
Toronto, ON
M5K 1J7

Tel: 416-943-5822
Fax: 416-864-1174
Email: Laarni.Tansingco@ca.ey.com

(g) State the name and title of each of the individuals that the Vendor is proposing for this Project:

Suzie Gignac, Partner

Lee Anne Probert, Senior Manager

Abbas Lakha, Manager

Fred Clifford, Partner

Ivan Chittenden, Partner

Blake Langill, Partner

Mita Meyers, Senior Manager

2. Submission Requirements and Accuracy of Information

The Vendor accepts the terms and conditions set out in the RFS. While this submission is provided for evaluation purposes only and is not legally binding before the execution of a SOW, I confirm that the information provided is accurate.

3. Certificate(s) of Insurance

As required in Article 32.4 – Proof of Insurance in the Master Agreement, please identify the status of the Vendor's Certificate(s) of Insurance by placing a check mark (√) in one (1) of the following three (3) boxes:

☐ a) the Vendor has previously submitted a Certificate of Insurance to MGCS, which has been approved

☐ b) the Vendor has included its Certificate of Insurance with this RFS submission (that will be subject to approval by MGCS) prior to the Client issuing a SOW

√ c) the Vendor agrees to submit a Certificate of Insurance (that will be subject to approval by MGCS) prior to the Client issuing a SOW

As required in the Request for Services, the Vendor agrees to submit a Certificate of Insurance (that will be subject to approval by the Client) prior to the Client issuing the SOW to evidence the additional insurance and/or the additional coverage required by the Client.

4. Conflict of Interest

The Vendor must complete the following:

(a) If the box below is left blank, the Vendor will be deemed to declare that: (1) there was no Conflict of Interest in preparing its submission; and (2) there is no foreseeable Conflict of Interest in the Vendor or any of its Personnel performing the contractual obligations contemplated in the Request for Services.

(b) Otherwise, if the statement below applies, check the box.

☐ **The Vendor declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Vendor foresees an actual or potential Conflict of Interest in it and/or its Personnel performing the contractual obligations contemplated in the Request for Services.**

(c) If the Vendor declares an actual or potential Conflict of Interest by marking the box above, the Vendor must set out below details of the actual or potential Conflict of Interest:

_____

_____

(d) The following individuals, as employees, advisors, or in any other capacity (i) participated in the preparation of our submission; **AND** (ii) were employees of the Ontario Public Service ("OPS") and have ceased that employment prior to the Requested Submission Date:

Name of Individual:

Job Classification (of last position with OPS):

Ministry/Agency/office of an officer of the Legislature of Ontario (where last employed with OPS):

Last Date of Employment with OPS:

Name of Last Supervisor with OPS:

Brief Description of Individual's Job Functions (at last position with OPS):

Brief Description of Nature of Individual's Participation in Preparation of Submission:

(Repeat above boxed information for each identified individual)

(e) The following are individuals that: (i) are proposed to be assigned by the Vendor to perform work under the SOW; **AND** (ii) were employees of the Ontario Public Service ("OPS") and have ceased that employment prior to the Requested Submission Date:

Name of Individual:

Job Classification (of last position with OPS):

Ministry/Agency/office of an officer of the Legislature of Ontario (where last employed with OPS):

Last Date of Employment with OPS:

Name of Last Supervisor with OPS:

Brief Description of Individual's Job Functions (at last position with OPS):

(Repeat above boxed information for each identified individual)

(f) We agree that, upon request, we shall provide the Client with a Conflict of Interest Declaration from each individual identified above in the form prescribed by the Client.

5. Schedules

This submission includes the following Schedules:

Schedule A (Pricing Schedule)
Schedule B (Resumes and References)
[Instructions to Vendor: List all other schedules.]

Ernst & Young LLP
I acknowledge that providing my name on the line below in electronic form will constitute a signature for the purposes of the *Electronic Commerce Act, 2000*, S.O. 2000, c. 17.
I have authority to bind the Vendor.

Per:

Signature: _____

Name: **Blake Langill**
_____

Title: **Partner**
_____

Date: **May 5, 2017**
_____

Attachment C – Resumes and References (Schedule B)

Suzie Gignac, CPA, CA
Partner, Engagement Partner
Ottawa

+1 613 598 4376

Suzie.R.Gignac@ca.ey.com

Profile

Suzie Gignac is a dedicated professional and proactive in serving the needs of her clients, providing cohesive, responsive, and integrated service delivery. Her responsibilities as Engagement Partner give her insights into the delivery of all aspects of service quality, as well as deeper knowledge of relevant issues. Suzie has experience working with several public sector entities following PSAS and is currently the Engagement Partner on the City of Ottawa, all related Business Improvement Areas and the Public Library Board. Her experience also includes work with the Province of Ontario, Office of the Conflict of Interest and Ethics Commissioner, Library of Parliament, and The Government of Canada, Treasury Board Secretariat of Canada.

Relevant Accounting Experience

- Suzie took part in the Interchange Canada program for 28 months. During this time, she held the position of Executive Director in Government Accounting Policy and Reporting at the Office of the Comptroller General, Treasury Board Secretariat. In this role, Suzie was responsible for accounting policy development and financial reporting within the federal government. She focused on the development and implementation of policy instruments related to financial accounting and reporting, and managed research efforts on complex accounting issues facing the Government of Canada. Her areas of responsibility included the Public Accounts of Canada, departmental financial statements and quarterly financial reporting.
- Suzie is a member of the EY national public sector group and is regularly consulted on public sector accounting and advisory projects underway throughout the country. Suzie is EY's representative on the intra-firm PSAS working group which discusses current issues related to PSAS and has been instrumental in providing issue papers to the new PSAS Public Sector Accounting Discussion Group (PSADG).
- Suzie serves as the Chair of the Audit Committee and a member of Council for the Standards Council of Canada, a government Crown Corporation following PSAS standards.
- Suzie served as a member of the Public Sector Accounting Board of Canada task force on assets which resulted in three new public sector standards which were approved in March 2015 (PS 3210, Assets, PS 3320, Contingent Assets, and PS 3380, Contractual Rights)
- Suzie has served as a member of the advisory committee and been a regular speaker at the Public Sector Accounting Conference held in Ottawa since 2011.

Education and designations

- Certified Public Accountant, State of Illinois, 2007
- Chartered Accountant, Institute of Chartered Accountants of Ontario, 1997
  (Uniform Final Exam - Ontario Bronze Medalist – fifth in Canada)
- Master of Business Administration, University of Toronto, 1995
- Bachelor of Economics, University of Western Ontario, 1991

Fred Clifford, CPA, CA, CPA (Illinois)

Senior Advisory Partner
(416) 943-2489
Fred.Clifford@ca.ey.com

Canadian Leader Financial Accounting Advisory Services Practice

Profile

- 30 years of experience serving a diverse group of companies across the Power and Utilities sector.
- Currently leads a National Advisory group focused on excellence in financial reporting, accounting process enablement, regulation, corporate governance, financial and other audit and attest services.

Relevant experience

- Held responsibility as the co-ordinating Partner for some of Canada's largest utilities including Fortis Inc., Ontario Power Generation, Toronto Hydro, Union Gas, Algonquin Power, Ottawa Hydro and numerous others.
- Assisted a variety of clients in the regulated utility sector with specific matters related to requests and filings with the Ontario Energy Board.
- Assisted clients with the development of approaches to record and report various Ontario Energy Board directives and guidance.
- Completed a cost allocation study for a regulated gas utility
- Audited a cost allocation and capital assets life study for a large electric distribution utility
- Previously Ernst & Young's National Utilities Leader for Canada with many years of professional experience serving energy clients, including electric utilities, regulated natural gas distribution companies, power generation, and other energy market participants
- Advised on a numerous transactions including acquisitions and divestures that included the integration of significant operations both in Canada, the United States and overseas.
- In-depth knowledge with respect to the relevant accounting and internal control issues that must be addressed by public reporting entities in either IFRS or US Gaap.
- Extensive knowledge of the capital market transactions

Education and professional credentials

- Certified Public Accountant (Illinois)
- Chartered Professional Accountant, Chartered Accountant
- Bachelor of Business Administration

Lee Anne Probert, CPA, CA, CPA (Illinois)
Senior Manager, Senior Accountant
Toronto

+1 416 943 3554

LeeAnne.Probert@ca.ey.com

Profile

Lee Anne Probert is a Senior Manager and has over 20 years of experience providing complex accounting, regulatory and financial reporting consultation services to audit and non-audit clients, previously as a member of EY's National Professional Practice group and currently as a member of EY's Financial Accounting Advisory Services group. She has an aptitude for applying accounting and reporting concepts to complex fact situations and demonstrated success in resolving complex accounting issues.

Relevant Accounting Experience

- Provides services to clients in a variety of industries, including utilities, government, mining, technology and communications, retail, distribution and manufacturing.
- Services provided in the power & utilities sector include:
    - Technical accounting advisor to:
        - A provincial electricity generation company converting from US GAAP to IFRS.
        - A gas distribution company converting from Canadian GAAP to US GAAP.
        - Three companies converting from Canadian GAAP to IFRS, including a national gas and electricity distribution and generation company, a local electricity distribution company and a provincial electricity distribution and generation company.
    - Was the audit senior manager for a provincial electricity transmission and distribution company.
-
- Clients also include entities impacted by PSAB standards, specifically:
    - Imperial Oil Resources Ventures Limited – Provided accounting advisory services with respect to the application of PSAB accounting standards to a potential guarantee by the federal government.
    - Office of the Provincial Controller - Provided on-call accounting advisory services on a variety of topics, including issues relating to (a) the Province's financial assistance to the auto industry, and (b) changes to the Ontario Teachers' Pension Plan.
    - Infrastructure Ontario – Provided accounting advisory services on a number of projects, including (a) the implementation of PSAB 3450, (b) a potential sale-leaseback transaction, (c) Ontario Place revitalization, and (d) MaRS restructuring.
    - Regional Municipality of Wood Buffalo - Provided accounting advisory services relating to the potential construction and operation of a sports and entertainment centre.
    - Courts Administration Service - Provided accounting advisory services with respect to the capitalization of certain costs.
    - Office of the Auditor General of Canada – Provided accounting advisory services with respect to the accounting for the Superannuation Account.
- Canadian representative on EY's global Leases Subject Matter Group and previously EY's Canadian representative on EY's Income Taxes Subject Matter Group and technical liaison with EY's Canadian Tax Practice.

- Technical lead on several GAAP conversion projects, focusing on identifying the key technical and business implications and working with management and to understand issues and differences.
- Plays an integral role in the creation and delivery of the EY's internal technical training across the country.

Education and designations

- Certified Public Accountant - Illinois, 2000
- Certified Public Accountant, Chartered Accountant - Ontario, 1998

Abbas Lakha, CPA, CA

Manager
(416) 943-3938
Abbas.Lakha@ca.ey.com

Bachelor of Commerce - University of Toronto, 1995

Profile

Abbas is a Manager with the Financial Accounting Advisory Services group in Toronto and has been with EY since 2009, with a gap of two years in industry with Toronto Hydro. He has gained IFRS and US GAAP experience by working with public and private companies in a variety of industries, specializing in: power/utilities (specifically electricity), as well as mining, manufacturing, and automotive.

Abbas has also been involved with presenting on key accounting changes, advising companies on complex accounting issues, developing capex and depreciation policies, assisting with regulatory filings, and working directly with the OEB in responding to queries. Further, he has taken a lead role in large internal control improvement projects, implementation of the COSO 2013 framework, SOX implementation and remediation, and has assisted with the development of complex revenue models.

Relevant Experience

- Abbas has been responsible for performing control and risk assessments for a large electricity distributor in Ontario, and re-aligning their control framework to the COSO 2013 Framework. This has involved a deep understanding of the electricity sector, the risks and exposures that exist within the sector, and thorough knowledge of an effective control environment
- Abbas has assisted in the development and risk analysis of an unbilled revenue recognition model that included several presentations to senior management, as well as a presentation to various stakeholders, including the OEB.
- Abbas has assisted with the implementation of the new revenue recognition standard (ASC 606) for a multinational US GAAP client which included presenting to and working with senior management.
- Abbas has been invited to present at upcoming conferences focusing on new accounting standards (IFRS 15 and IFRS 16) within US GAAP and IFRS, including the Canadian Electricity Association Conference in June 2017

- Abbas has provided recommendations to assist a large utility distribution company in better tracking its assets, and creating a formidable capex strategy. This included the presentation of a report, findings, and recommendations to senior management of the company.
- Abbas has led the audit of a large multibillion dollar power and utilities client focusing on generation and distribution of electricity, gas and water in Canada and the United States. This has included a thorough review of complex transactions; including but not limited to business acquisitions, control audits, review of the consolidation of financial information and presenting issues and resolutions to senior management.

Education and designations

- Chartered Accountant, Institute of Chartered Accountants of Ontario, 2013
    - Bachelor of Business Administration, Schulich School of Business, 2010

Ivan Chittenden, CPA, CA
Partner
Toronto

+1 416 943 3110

Ivan.Chittenden@ca.ey.com

Profile

- More than 30 years of experience serving the financial reporting and audit needs of both global and North American-based public and private entities.
- Partner in the Professional Practice group of EY Canada providing accounting and regulatory support to the firm's clients.

Accounting and auditing Experience

- Engagement partner responsible for co-ordinating all of EY's on-call accounting advisory services to the Office of the Provincial Controller up to 2015.
- Extensive experience providing accounting advisory services to both audit and non-audit clients, including previous advisory assignments for the Office of the Provincial Controller
- Was the lead engagement partner for Brookfield Renewable Partners for five years

Education and designations

- CPA, CA, 1982
- BBA (Hons) – Wilfird Laurier University, 1983

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Blake Langill, CPA, CA

Partner, Engagement Quality Review Partner

+1 416-943-3556

blake.w.langill@ca.ey.com

Profile

Blake is known for his ability to proactively identify technical issues as they arise, and provide meaningful, efficient resolution. He was a part of our Professional Practice Group for three years, providing technical and regulatory advice to audit and non-audit clients. He has experience in advising clients across various industries on the transition to US GAAP and/or IFRS and routinely deals with advising clients with complex accounting matters.

Relevant Accounting Experience

- Blake is a senior assurance partner at EY with more than 20 years of experience.
- Has provided audit and advisory services to many of Canada's leading companies across many industries and across multiple financial reporting frameworks (IFRS, PSAS, US GAAP and ASPE)
- His public sector experience includes working with the Ontario Office of the Provincial Controller and with Infrastructure Ontario on accounting advisory engagements
- Was the lead audit partner for Northland Power for seven years, including during its transition to IFRS
- Provided accounting advisory services to Ontario Power Generation and Enwave involving ASPE, US GAAP and IFRS
- Provided accounting support to non-accounting advisory engagements.
- Established understanding of unique risks associated with accounting and reporting issues.
- For three years was a member of EY's Professional Practice group, where he provided technical accounting and regulatory advice to many of the firm's clients.

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Mita Meyers, CPA, CA
Senior Manager
Ottawa
613 598 4307
mita.meyers@ca.ey.com

Profile

Mita is a Senior Manager with EY's Assurance group and has over 13 years of experience providing financial statement audits, financial accounting advisory services, contribution audits, management and financial accounting advisory services to various entities in the public and private sector both IFRS and PSAS. She has worked extensively on IFRS transition approach from the client's and accounting advisor's perspective on both private, crown corporation and regulated entity. As part of her experience at the Office of Auditor General, Mita served as the project leader on a number of crown corporations and other public sector entities. She was involved in analyzing complex auditing and financial accounting issues as they related to the Crown Corporation and departmental work while considering all governing authorities' implications. In addition, often communicated extensively with the Office of the auditor General and dealt with OSFI on a number of complex issues.

Relevant accounting IFRS and PSAS experience

In Progress- IFRS 9 implementation- Canada Mortgage and Housing Corporation (CMHC)

- As part of IFRS 9 assessment team, Mita is directly involved in conducting a high-level analysis of the accounting standard differences including the identification of the various options available under IFRS; had presented the customized training to the employees of the CMHC;
- A business impact analysis outlining how this project plan was integrated with other initiatives specifically an impact on the information technology areas to implement IFRS and an estimation of the conversion resources required as part of the implementation; Liaised with subject matter experts in financial instruments to analyze any accounting implications relevant to CMHC.

Completed - IFRS Conversion in 2015- Hydro Ottawa

- The IFRS Diagnostic Impact Assessment aimed to conduct a high level review designed to identify the main IFRS conversion issues for Hydro Ottawa. Including:
  - Assessed how the current financial reporting and business areas were impacted by IFRS, and developed information to facilitate the structuring of the IFRS conversion project. Evaluated the level of preparation, translated the business and accounting requirements into potential IT system requirements, and identified the main business impacts of adopting IFRS which included any major change management hurdles to conversion.
  - Determination of key Canadian GAAP to IFRS reporting differences and potential impact for Hydro Ottawa; Assessment of the qualitative criteria impacting the transition timing decision; Auditing the quantitative impact and disclosure of the differences

Other :

- IFRS Financial Accounting and Advisory Services- Canadian Commercial Corporation (CCC)- Mita also worked on an engagement to assist the Canadian Commercial Corporation (CCC) in the accounting for the foreign

exchange relating to advances, progress payments and deferred revenues denominated in non-Canadian currencies in accordance with International Financial Reporting Standards (IFRS) in 2016-17.

- Financial reporting assistance and accounting support for The Regional Municipality of Wood Buffalo (RMWB)- The scope of our engagement is to provide financial accounting advisory assistance in connection to RMWB's Letter of Intent (LOI) regarding the design, construction, operation and financing of the Sports and Entertainment Centre.
- Accounting and financial ad-hoc services to Canadian Payments Association (CPA) – various accounting advisory support including the research on the capitalization of costs and analysis of how it would be applicable to the organization.
- Currently a leads in the development of the financial accounting advisory practice in Ottawa, involved with financial reporting developments; conducted managerial training and accounting developments training internally and externally.

Other relevant engagement experience:

Lead senior manager on the following audit engagements:
City of Ottawa- Financial Statement Audit (PSAS) where Mita is responsible in leading the audit along with multiple other engagements concurrently. Provided technical assistance to the team and the City's senior management including assessed technical accounting and audit issues in accordance with PSAB guidance; identified "what can go wrong" considerations (similar to risk identification) in the business processes and accounting activities. Reviewed and documented audit procedures related to financial statement reporting, including footnote disclosures and suggested improvements to ensure compliance with accounting standards.

Hydro Ottawa Holding Group of Companies- Financial Audit (IFRS) As a senior manager, Mita was responsible for leading an audit with a team of individuals which included both audit and internal specialists (tax and pension experts). The audit included identifying financial processes and key internal controls relevant to financial reporting upon which we intend to rely. Where internal and financial control deficiencies were noted, we brought these to management's attention. Hydro Ottawa has multiple subsidiaries that require issuing their own separate opinions as well as consolidated into the parent company.

Canada Mortgage and Housing Corporation- Financial Audit (IFRS)Mita has been involved in the joint audit (with the Office of the Auditor General) to conduct the annual financial statement audit for CMHC. She assessed the presentation of the financial statement and disclosures in accordance with IFRS. She is the main contact for accounting and auditing problem resolutions. Currently involved in a Special Exam conducted every 10 yrs for a Crown corporation, acting as a lead Senior Manager from EY (this is done jointly with OAG).

Education and designation

- Certified Public Accountant, Chartered Accountant, Ontario, 2005
- Bachelor of Commerce (Finance and Accounting), Carleton University, 2003

Team References:

Suzie Gignac, Lee Anne Probert, Blake Langill and Ivan Chittenden

Nadine Petsche, Director, Accounting Policy and Financial Reporting Branch, Treasury Board Secretariat, Office of the Provincial Controller (tel: 416-325-8027)

Fred Clifford

Alan Hoverd, CFO, Hydro Ottawa (tel: 613-738-5499 Ext.205)

Abbas Lakha

Laura Foster, Interim CFO, Toronto Hydro (email: lfoster@torontohydro.com)

Mita Meyers

Kathleen Devenny, VP Financial planning and analysis, CMHC (tel: 613-748-2877)

Derek Volrath, Director of Finance, Canadian Payments Association (tel: 613-691-4471)

EY | Assurance | Tax | Transactions | Advisory

About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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Improving business performance while managing risk is an increasingly complex business challenge. Whether your focus is on broad business transformation or, more specifically, on achieving growth or optimizing or protecting your business, having the right advisors on your side can make all the difference. Our 30,000 advisory professionals form one of the broadest global advisory networks of any professional organization, offering seasoned, multidisciplinary teams that work with our clients to deliver powerful and exceptional client service. We use proven, integrated methodologies to help you resolve your most challenging business problems, deliver a strong performance in complex market conditions and build sustainable stakeholder confidence for the longer term. We understand that you need services that are adapted to your industry issues, so we bring our broad sector experience and deep subject matter knowledge to bear in a proactive and objective way. Above all, we are committed to measuring the gains and identifying where your strategy and change initiatives are delivering the value your business needs.

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EY Submission RFS TBS-OTB-OPCD-21 - Pricing Supplement.pdf

Treasury Board Secretariat,
Office of the Provincial Controller

Complex Accounting Services related to Electricity Sector Entities

Response to RFS TBS-OTB-OPCD-21
VOR # OSS-00426611

May 5, 2017

Pricing Response

Prepared for

Nadine Petsche, Director
Accounting Policy and Financial Reporting Branch
Nadine.Petsche@ontario.ca

Submitted by

Ernst & Young LLP
EY Tower, 222 Bay St.
Toronto, Ontario M5K 1J7

Schedule A: Pricing Schedule

Please provide the following information in accordance with Sections 2.2.1 and 2.2.2 of this Request for Services:

Legal Name of Vendor: **Ernst & Young LLP**

Part A – Vendor Personnel

Complete the following table in respect of all proposed Vendor Personnel that will perform the Services and/or provide the Deliverables. Vendors should not include proposed Subcontractors in this Part A of Schedule A.

List the names of Consultants who will be assigned to the Project	Role and Experience Level
Fred Clifford, Partner	Intermediate Consultant / Sr. Analyst
Ivan Chittenden, Partner	Intermediate Consultant / Sr. Analyst
Lee Anne Probert, Senior Manager	Senior Consultant / Project Lead
Suzie Gignac, Partner	Intermediate Consultant / Sr. Analyst
Mita Meyers, Senior Manager	Intermediate Consultant / Sr. Analyst
Abbas Lakha, Manager	Intermediate Consultant / Sr. Analyst
Blake Langill, Partner	Intermediate Consultant / Sr. Analyst

Will Subcontractors be used for this Project? Yes [ ] No [X] If "Yes", complete Part B.

Part B – Vendor Subcontractors

Complete the following table in respect of the proposed Vendor Subcontractors at any tier of subcontracting, including any Vendor contractors that will perform the Services and/or provide the Deliverables.

Legal Name of Subcontractor	List the names of Consultants who will be assigned to the Project	Role and Experience Level

Part C – Fixed Price

In the following table, enter the Fixed Price in respect of each particular Service to be performed and the particular Deliverables to be provided, which amount is fixed and not subject to change unless otherwise agreed to by the Client and the Vendor in a Change Order.

For the purposes of bidding, please do not alter the number of working days for each role.

Fixed Price for each Deliverable *(List each deliverable below):*	**Amount**
• One (1) Senior Consultant / Project Lead shall provide up to 40 working days of effort over the term of the agreement. The Vendor shall provide all deliverables as described in Section 1.5 (Client's Requirements).	$87,725.20
• One (1) Intermediate Consultant / Sr. Analyst shall provide up to 25 working days of effort over the term of the agreement. The Vendor shall provide all deliverables as described in Section 1.5 (Client's Requirements).	$54,838.25
Total Fixed Price:	$142,553.45

Part D – Other Expenses

In the following table, Vendors should list all expenses applicable to the Project that have not been included in the Total Fixed Price amount as stated in Part C of this Schedule A. Vendors should review the Travel, Meal and Accommodation Expenses section of the RFS prior to completing this table.

Expenses by Type *(List each item below):*	**Proposed Amount**
	$
	$
Total Other Expenses:	$0

Part E – Maximum Price

In the following table, Vendors shall calculate Subtotal Price by adding Total Fixed Price, as stated in Part C of this Schedule A, to Total Other Expenses, as stated in Part D of this Schedule A.

Vendors shall calculate Maximum Price by adding the Subtotal Price to the applicable HST.

Subtotal Price (Part C + Part D):	$142,553.45
HST (if applicable):	$18,531.95
Maximum Price (Subtotal Price + HST):	**$161,085.40**

Part F – Follow-on Work Per Diem Rates

In the following table, enter the Per Diem Rates in respect of each particular Role to be performed which amount is fixed and not subject to change unless otherwise agreed to by the Client and the Vendor in a Change Order.

In the event that Follow-on work is requested, the Ministry will prepare a contract amendment to engage the consultant(s) for a specified number of days of work. Details on deliverables will be disclosed in the amendment.

Fixed Price for each Core Deliverable	Per Diem Amount
• Senior Advisor	$2,193.13

Review draft OFHP legislation (Steen to attend).rtf

From: Hume, Steen (ENERGY) []
To: Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Gavin He [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'Feldman, Michael' [mfeldman@torys.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; 'Hill, Krista' [khill@torys.com]
Subject: Review draft OFHP legislation (Steen to attend)
Date: Friday, March 31, 2017 12:58:26

Hi Kim and John, please forward the meeting invite to your legal counsel as you deem appropriate.

Hilary

Review of H1 Control Analysis.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Review of H1 Control Analysis
Date: Friday, June 16, 2017 17:45:44
Attachment 1: KPMG engagement request template H1 control analysis June 15 17.docx

---

Michel,

Further to our recent discussions, please find attached a template summarizing the nature of work that we are requesting that KPMG undertake in relation to the Hydro One control analysis (as per PSAS).

Please let me know if you have any issues/concerns w.r.t the request and/or timing.

Thanks in advance.

Nadine

KPMG engagement request template H1 control analysis June 15 17.pdf

Call up to KPMG under contract:
FS-TBS-OTB-OPCD-21

Date:
June 14, 2017

Required response time: (provide details as applicable)
4 months (approximately end of October, 2017)

Nature of request: (click all that apply)

☐ Accounting standards research / analysis

☐ Comments on memo prepared by OPC

☐ Prepare draft memo

X Other (please provide details) – to update control analysis related to Hydro One for purposes of consolidation on the Province's Public Accounts, taking into account the most recent dispositions by the government and any changes in facts related to the Hydro One governance framework.

Format of response: (click all that apply)

☐ Call / discussion

☐ Informal written response / email

☐ Comments on document(s) prepared by OPC

☐ Formal written response on KPMG letterhead

☐ CPA Canada s.7600 report (**note that if this is selected, this will require a separate contract, SOW and/or RFS**)

X Other (please provide details) – through track changes provide updates to the previous document reflecting control analysis for Hydro One, and provide support to OPCD in documenting key considerations and conclusions related to the overall results

Issue / Background Information:

Prior to the Hydro One IPO, OPCD undertook an assessment of provincial control (for accounting purposes), based on the anticipated governance framework and relationship between the Province and the entity following the IPO.
The analysis provided a number of considerations related to the sale of subsequent trenches of shares, including disposition of shares which would result in the Province holding <50% of outstanding common shares in the company.

Facts & Circumstances:

In the 2015-16 fiscal year, the Province sold approximately 16 per cent of Hydro One's common shares at a price of $20.50 per common share, through a public offering and through related share sales. As of March 31, 2016, the Province owned approximately 84 per cent of Hydro One's common shares.

An accounting gain of $783 million was recognized in the 2015–16 financial results in connection with the sale of Hydro One shares.

In April 2016, the Province sold an additional 14 per cent of Hydro One's common shares at a price of $23.65 per common share, through a secondary offering generating gross proceeds of approximately $2 billion. As of March 31, 2017, the Province owned approximately 70 per cent of Hydro One's common shares.

An additional gain of $70 million was deferred in connection with a purchase by Ontario Power Generation (OPG) of 9 million common shares of Hydro One through the secondary offering. OPG purchased these shares to distribute to eligible OPG employees represented by the Power Workers' Union and The Society of Energy Professionals as part of future share delivery obligations under the collective agreements. This deferred gain will be recognized as revenue as the Hydro One common shares are distributed to qualifying OPG employees for up to a 15 year period starting in 2018. There is no agreement between OPG and the Province with respect to Hydro One common shares or the voting of those shares.

In May, 2017 the government sold the third tranche of shares in Hydro One, reducing its holdings to 40%. No further offerings of shares are anticipated. The province is retaining its 40 percent stake in Hydro One and remains the single largest shareholder as no other shareholders are able to hold more than 10%.

Preliminary Views/Desired Outcomes (if any):
A complete analysis, considering any relevant factors that may materially impact the conclusion as to whether the Province's investment in Hydro One continues to be controlled by the Province. Hydro One continues to be a government business enterprise, and would continue to be accounted for under the modified equity basis of accounting if it is controlled by the government.
Final analysis is required to help inform the upcoming 2018 Provincial Budget process.

Questions:
None

RFS-TBS-OTB-OPCD-16 - Signed - 31 October 2016.pdf

Treasury Board Secretariat

Office of the Treasury Board
Office of the Provincial Controller Division
Accounting Policy & Financial Reporting Branch
Frost Building South, 2nd Floor
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Tel. (416) 325-8027

Secrétariat du Conseil du Trésor

Bureau du Conseil du Trésor
Bureau du contrôleur provincial
Direction de la méthode comptable et des rapports financiers
Édifice Frost Sud, 2e étage
7 Queen's Park Cr.
Toronto ON M7A 1Y7
Téléphone. 416-325-8027

Ontario

October 31, 2016

Ms. Anna Pesme
Ernst & Young LLP
222 Bay Street
Toronto ON
M5K 1J7

Ms. Pesme

RE: RFS-TBS-OTB-OPCD-16

The Ministry is pleased to advise that you are the selected proponent pursuant to the above-noted procurement process.

Enclosed please find two (2) copies of the Agreement for your signature. Please return one copy of the executed Agreement within ten (10) business days of receipt of this notice:

Please be advised that this notice of selection letter should not be construed as permission from the Ministry to begin the work detailed in the Agreement. The Ministry will not be responsible or liable for any expenses related to the Deliverables, and the selected proponent is not to accept work requests prior to the execution of the Agreement by the Ministry. Work may begin pursuant to the Agreement when:

(a) the Agreement signed by both parties is returned to the selected proponent, and

(b) written permission is expressly given to the Supplier by the Ministry Representative to begin work under the Agreement.

.../2

FORM OF STATEMENT OF WORK – OPS ENTITY

Statement of Work for Management Consulting Services

This Statement of Work no. **– RFS TBS-OTB-OPCD-16 made in duplicate and effective October 31, 2016 ending on February 10, 2018 with a 6 month extension option in favour of the ministry with no increase in ceiling price.**

Ernst & Young LLP (the "Vendor" or "Ernst & Young") and Her Majesty the Queen in right of Ontario as represented by the President of the Treasury Board (the "Client") enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement").

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* - The Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$ 450,000.00 does not include HST

4. *Project Start Date:* October 31, 2016

5. *Project End Date:* February 10, 2018 (with a 6 month extension option)

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following

    - Advice on complex accounting issues and accounting for complex financing transactions;
    - Capital investment, joint ventures and private-public partnerships
    - Proposed government acquisitions and divestments;
    - Providing expert advice on specialized issues such as the implications of changes in public sector accounting standards and the interpretation and

Ivan Chittenden will be supported by Suzie Gignac, Lee Anne Probert, Daniel Mortimer and Blake Langill and other staff as required, depending on the nature of advisory services request, Please note all individuals mentioned above have to sign the confidentiality agreement form and go through security requirements. Any staff who are subsequently assigned to this SOW will be subject to the same procedures.

14. **Invoices** - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client:	Treasury Board Secretariat, Office of the Provincial Controller Division
Branch:	Accounting Policy and Financial Reporting
Representative:	Nadine Petsche
Title:	Director, Accounting Policy and Financial Reporting
Phone number:	416-325-8027
Email:	Nadine.petsche@ontario.ca

15. *Knowledge Transfer:* The Vendor will work closely with the Client to ensure knowledge transfer to the Client's designated staff, and as necessary with the Auditor General.

16. *Destruction of Information* - The Vendor shall destroy all information contained on any media that was provided by the Client or at the direction of the Client, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

17. *Indemnity* – the indemnity set out in the Master Agreement applies to this assignment.

18. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	**Treasury Board Secretariat**
Client Representative:	**Nadine Petsche**
Telephone number:	**416-325-8027**
E-mail:	**Nadine.petsche@ontario.ca**

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and following the term of the Agreement between **Ernst & Young LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain measures to ensure the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain the most appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

The undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Name: Suzanne Gignac

Signature: S Gignac

Date: Nov 2/16

Witness: Dianne Monaghan

Signature: D Monaghan

Date: Nov 2/16

Appendix D – Tax Compliance Declaration Form

The Ontario Government expects all suppliers to meet their Ontario tax obligations on a timely basis. In this regard, proponents are advised that their Ontario tax obligations, if any, must be in good standing in order to be considered for a contract award (see Section 3.2.3 of the RFP). In order to be considered for a contract award, the proponent must submit the following tax compliance status statement and the following consent to disclosure:

Declaration

I/WE hereby certify that **Ernst & Young LLP** (the "Proponent") at the time of submitting its proposal, is in full compliance with all applicable Ontario tax statutes, whether administered by the Treasury Board Secretariat or by the Canada Revenue Agency, and that, in particular, all returns required to be filed have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained; or the Proponent will take all necessary steps prior to being considered for contract award in order to be in full compliance with all applicable Ontario tax statutes.

(Please check applicable box)

The Proponent ☐ is / ☐ is not a corporation subject to Ontario corporate tax under the *Taxation Act, 2007* (Ontario).

(Please insert Proponent's Business Number) ***BN# 13086 6262***

Consent to Disclosure

The Proponent consents to the Ministry of Finance releasing the taxpayer information to the Ministry of Finance as necessary for the purpose of verifying the Proponent's compliance with Ontario tax statutes.

The Proponent consents to the Ministry of Finance releasing taxpayer information to the Requesting Ministry as necessary for the purpose of verifying the Proponent's compliance with Ontario tax statutes.

Dated at Toronto this 7 day of November 2016

(Authorized signing officer)

ALAN SMITH CFO, Partner.

(Print Name) **(Title)**

I have authority to bind the Proponent.

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Name: BLAKE LANGILL

Signature:

Date: Nov 1/16

Witness: Nabeel Rabani

Signature:

Date: Nov 1/16

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Name: DANIEL MORTIMER

Signature:

Date: NOV 2/2016

Witness: Divya Kamath

Signature:

Date: NOV 2/2016

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Name: Ivan Chi-Hayden

Signature:

Date: Nov 4/16

Witness: BLAKE LANGILL

Signature:

Date: Nov 4/16

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Name: LEE ANNE PIGGOTT

Signature: [signature]

Date: NOVEMBER 2, 2016

Witness: CHRIS MADSEN

Signature: [signature]

Date: 11/02/2016

RRA background.rtf

From: Petsche, Nadine (TBS) []
To: Natalie Schaus (Natalie.Schaus@ieso.ca) [Natalie.Schaus@ieso.ca]
CC: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: RRA background
Date: Monday, May 15, 2017 13:38:19

Natalie,

Further to our discussion, I have included some extracts below related to different types of rate regulated accounts. Some of this background may be helpful in documenting the types of accounts reported by the IESO.

As requested, I am also cc'ing Michel on this note so that you both receive these extracts at the same time.

Regards,

Nadine

XXX's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon XXX a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred. Courts have found that prudence is deemed to exist until such time as the OEB (in its discretion), at a later date, values or assesses the balance of that account and determines that the recorded balance is wholly recoverable or that certain of the recorded amounts have in fact not been prudently incurred and are not recoverable.

Given that XXX's recovery or payment of the amounts recorded in its deferral and variance accounts, and subsequently disposed of by the OEB, are part of the calculation of XXX's payment amounts under section 78.1 of the *Ontario Energy Board Act, 1998* (the "OEB Act"), XXX is entitled to have recorded amounts assessed and to recover those amounts pursuant to the OEB's order. Correspondingly, the OEB, as a matter of law, is obligated to establish XXX's payment amounts in accordance with the rules prescribed by the regulations in accordance with the just and reasonable standard (as applicable). In doing so, the OEB must assess the balances in the previously established accounts for prudence and accuracy and issue a Decision and Order on their disposition.

For certain of XXX's deferral and variance accounts, the legal origins of which are found in Regulations under the OEB Act, the OEB does not have jurisdiction over whether the

account may be established. For hese accounts, the OEB also does not have jurisdiction to undertake a prudence review to determine if any recorded amounts should be excluded.

Once the OEB has approved the balance of an account for recovery, with or without undertaking a prudence review (as applicable), the specific amount or balance that XXX will be allowed to recover will have been determined. The subsequent issuance by the OEB of a payment amounts order will establish the mechanism by which such specific approved amounts will be recovered and remitted to XXX.

The OEB's review and approval of the balance in a deferral or variance account is a process for determining the quantum and timing for the payment to or from XXX in respect of that account, which will be reflected in a Decision and Order of the OEB. As indicated, XXX's legal right to record amounts in an account and to account for the amounts recorded on the basis that they have been prudently incurred, subject to the OEB in its discretion subsequently determining otherwise, is established through the authorization of the account by the OEB or pursuant to regulation. XXX's right to recover prudently incurred amounts therefore arises as and when such amounts are recorded in an approved account, in accordance with the parameters established by the OEB or by regulation for that account, subject to the OEB's subsequent prudence review to assess the value of the account.

In the circumstance where XXX ceases operations the OEB would have the jurisdiction and the obligation to establish a rate or payment amount that would allow XXX to recover or obligate XXX to disburse prudent amounts recorded in a deferral or variance account. Such a rate or payment amount would not have to be based on xx.

A. Variance and Deferral Accounts

Variance and deferral accounts are tools that the OEB uses to deal with uncertainty, including circumstances that are difficult to forecast and that may be beyond the control of the regulated utility. The use of these accounts protects the interests not only of utilities, but also the interests of ratepayers. Once the deferral or variance accounts are established, either by regulation or OEB order, the amounts recorded in the accounts must be assessed for prudence by the OEB (to the extent the OEB has jurisdiction to do so) and the resulting approved amounts must be paid to or by XXX as the amounts are a part of XXX's just and reasonable payment amounts, as explained above.

A "variance account" may be used to track underestimates or overestimates of specific costs or revenues so as to enable the amount of the variance to be disposed of, normally through higher or lower payment amounts established by the OEB in the future.

A "deferral account" may be used, for example, to track specific costs incurred by a utility with respect to a project or circumstance until a future date, after which the costs recorded in the account are subject to prudence review by the OEB before the utility will

be allowed to begin recovering those costs from ratepayers. For example, O. Reg. 53/05 authorized OPG to establish a deferral account to record non-capital costs associated with a large nuclear project that involved the return-to-service of certain nuclear generating units. The regulation further required that the OEB ensure OPG recover the balance in the account over a certain period of time, which the OEB determined in EB-2007-0905.

The nature of the rights that arise from the authorization of a deferral or variance account by the OEB or under Regulations are discussed in the analysis section, below. For accounts that have already been authorized, as part of the OEB's rate-setting function and its powers with respect to variance and deferral accounts, the OEB will periodically[1] review a utility's variance and deferral accounts to ensure that the balances reflect amounts that are prudent and have been accurately recorded. Based on such review, the OEB makes a determination as to how much of the recorded balance the utility will recover (or repay) and the period over which such amount shall be recovered (or repaid). This determination will be made by way of a Decision from the OEB. In the normal course (i.e. where the accounts are reviewed in the context of a rate or payment amount application), the utility will then be required to file a draft payment amounts order or draft rate order, which is reviewed by the OEB. Once the final payment amounts order or rate order is approved by the OEB, the IESO will be required to implement the order by paying XXX in accordance with the order.

Where the balance recorded in a variance or deferral account is in a debit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory asset" and will represent the specific amount that the utility will have a right to recover in such manner as is ordered by the OEB. Similarly, where the balance recorded in a variance or deferral account is in a credit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory liability" and will represent the specific amount that the utility will have an obligation to disburse in such manner as is ordered by the OEB.

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[1] While normally this will be in the context of a rate or payment amount application, XXX could apply to have the OEB undertake such a review at any time through a separate proceeding. Similarly, the OEB has the right to undertake such a review at any time on its own motion. See s. 78.1(5) of the *OEB Act*.

RRA background.pdf

From:	Petsche, Nadine (TBS)
To:	Natalie Schaus (Natalie.Schaus@ieso.ca)
Cc:	Picard, Michel (mpicard@kpmg.ca)
Subject:	RRA background
Date:	May 15, 2017 1:38:00 PM

Natalie,

Further to our discussion, I have included some extracts below related to different types of rate regulated accounts. Some of this background may be helpful in documenting the types of accounts reported by the IESO.

As requested, I am also cc'ing Michel on this note so that you both receive these extracts at the same time.

Regards,

Nadine

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Given that XXX's recovery or payment of the amounts recorded in its deferral and variance accounts, and subsequently disposed of by the OEB, are part of the calculation of XXX's payment amounts under section 78.1 of the *Ontario Energy Board Act, 1998* (the "OEB Act"), XXX is entitled to have recorded amounts assessed and to recover those amounts pursuant to the OEB's order. Correspondingly, the OEB, as a matter of law, is obligated to establish XXX's payment amounts in accordance with the rules prescribed by the regulations in accordance with the just and reasonable standard (as applicable). In doing so, the OEB must assess the balances in the previously established accounts for prudence and accuracy and issue a Decision and Order on their disposition.

For certain of XXX's deferral and variance accounts, the legal origins of which are found in Regulations under the OEB Act, the OEB does not have jurisdiction over whether the account may be established. For hese accounts, the OEB also does not have jurisdiction to undertake a prudence review to determine if any recorded amounts should be excluded.

Once the OEB has approved the balance of an account for recovery, with or without undertaking a prudence review (as applicable), the specific amount or balance that XXX will be allowed to recover will have been determined. The subsequent issuance by the OEB of a payment amounts order will establish the mechanism by which such specific approved amounts will be recovered and remitted to XXX.

The OEB's review and approval of the balance in a deferral or variance account is a process

for determining the quantum and timing for the payment to or from XXX in respect of that account, which will be reflected in a Decision and Order of the OEB. As indicated, XXX's legal right to record amounts in an account and to account for the amounts recorded on the basis that they have been prudently incurred, subject to the OEB in its discretion subsequently determining otherwise, is established through the authorization of the account by the OEB or pursuant to regulation. XXX's right to recover prudently incurred amounts therefore arises as and when such amounts are recorded in an approved account, in accordance with the parameters established by the OEB or by regulation for that account, subject to the OEB's subsequent prudence review to assess the value of the account.

In the circumstance where XXX ceases operations the OEB would have the jurisdiction and the obligation to establish a rate or payment amount that would allow XXX to recover or obligate XXX to disburse prudent amounts recorded in a deferral or variance account. Such a rate or payment amount would not have to be based on xx.

A. Variance and Deferral Accounts

Variance and deferral accounts are tools that the OEB uses to deal with uncertainty, including circumstances that are difficult to forecast and that may be beyond the control of the regulated utility. The use of these accounts protects the interests not only of utilities, but also the interests of ratepayers. Once the deferral or variance accounts are established, either by regulation or OEB order, the amounts recorded in the accounts must be assessed for prudence by the OEB (to the extent the OEB has jurisdiction to do so) and the resulting approved amounts must be paid to or by XXX as the amounts are a part of XXX's just and reasonable payment amounts, as explained above.

A "variance account" may be used to track underestimates or overestimates of specific costs or revenues so as to enable the amount of the variance to be disposed of, normally through higher or lower payment amounts established by the OEB in the future.

A "deferral account" may be used, for example, to track specific costs incurred by a utility with respect to a project or circumstance until a future date, after which the costs recorded in the account are subject to prudence review by the OEB before the utility will be allowed to begin recovering those costs from ratepayers. For example, O. Reg. 53/05 authorized OPG to establish a deferral account to record non-capital costs associated with a large nuclear project that involved the return-to-service of certain nuclear generating units. The regulation further required that the OEB ensure OPG recover the balance in the account over a certain period of time, which the OEB determined in EB-2007-0905.

The nature of the rights that arise from the authorization of a deferral or variance account by the OEB or under Regulations are discussed in the analysis section, below. For accounts that have already been authorized, as part of the OEB's rate-setting function and its powers with respect to variance and deferral accounts, the OEB will periodically [1] review a utility's variance and deferral accounts to ensure that the balances reflect amounts that are prudent and have been accurately recorded. Based on such review, the OEB makes a determination as to how much of the recorded balance the utility will recover (or repay) and the period over which such amount shall be recovered (or repaid). This determination will be made by way of a Decision from the OEB. In the normal course (i.e. where the accounts are reviewed in the context of a rate or payment amount application), the utility will then be required to file a draft payment amounts order or draft rate order, which is reviewed by the OEB. Once the final payment amounts order or rate order is approved by the OEB, the IESO will be required to implement the order by paying XXX in accordance with the order.

Where the balance recorded in a variance or deferral account is in a debit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory asset" and will represent the specific amount that the utility will have a right to recover in such manner as is ordered by the OEB. Similarly, where the balance recorded in a variance or deferral account is in a credit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory liability" and will represent the specific amount that the utility will have an obligation to disburse in such manner as is ordered by the OEB.

---

[1] While normally this will be in the context of a rate or payment amount application, XXX could apply to have the OEB undertake such a review at any time through a separate proceeding. Similarly, the OEB has the right to undertake such a review at any time on its own motion. See s. 78.1(5) of the *OEB Act*.

RRA.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: RRA
Date: Thursday, June 08, 2017 12:29:38

Michel/Kim,

Based on a recent call with E&Y (our external advisors), we would like to schedule a short call to provide additional background and details to help E&Y understand the IESO's market related activities and adoption of RRA.

Michel's expertise w.r.t. RRA will be valuable in helping E&Y to understand the interpretation and application of GAAP w.r.t. regulator independence as well. Hope that the proposed time works with your schedule.

Thanks in advance.

Nadine

RRA.pdf

From: Petsche, Nadine (TBS)
To: Picard, Michel (mpicard@kpmg.ca); Kim Marshall (Kim.Marshall@ieso.ca)
Cc: Virani, Shyrose (TBS)
Subject: RRA
Date: June 8, 2017 12:29:00 PM

Michel/Kim,

Based on a recent call with E&Y (our external advisors), we would like to schedule a short call to provide additional background and details to help E&Y understand the IESO's market related activities and adoption of RRA.

Michel's expertise w.r.t. RRA will be valuable in helping E&Y to understand the interpretation and application of GAAP w.r.t. regulator independence as well. Hope that the proposed time works with your schedule.

Thanks in advance.

Nadine

Security Clearance - Triton.rtf

From: Virani, Shyrose (TBS) []
To: louellette@kpmg.ca [louellette@kpmg.ca]; jmdestefanis@kpmg.ca [jmdestefanis@kpmg.ca]; cngorima@kpmg.ca [cngorima@kpmg.ca]; aduret@kpmg.ca [aduret@kpmg.ca]; dweatherdon@kpmg.ca [dweatherdon@kpmg.ca]
Subject: Security Clearance - Triton
Date: Wednesday, June 21, 2017 11:25:25

Hi

Michel Picard has provided me with your names indicating that you will be working on our files for Complex Accounting Services related to Electricity Sector Entities, prior to you starting with our files, we need you to complete the security check. Triton Company will be getting in touch with you, please provide all necessary personal information. If you have any additional questions, please do not hesitate to contact me at 416 325 1448.

Thanks

Shyrose Virani

Administrative Coordinator

Treasury Board Secretariat

Security Screening.rtf

From: Virani, Shyrose (TBS) []
To: ivan.chittenden@ca.ey.com [ivan.chittenden@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; daniel.mortimer@ca.ey.com [daniel.mortimer@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]
CC: laarni.tansingco@ca.ey.com [laarni.tansingco@ca.ey.com]
Subject: Security Screening
Date: Thursday, December 01, 2016 17:06:01

Hi

Triton will be contacting you for the above check. Kindly provide all necessary information.

Thanks
Shyrose Virani

From:	Virani, Shyrose (TBS)
To:	Patel, Bharat (TBS); Petsche, Nadine (TBS); "suzie.r.gignac@ca.ey.com"
Cc:	Keates, James (TBS)
Subject:	Seeking advice
Start:	December 8, 2016 4:00:00 PM
End:	December 8, 2016 4:30:00 PM
Location:	Suzie to call Nadine at 416 325 8027

From: Suzie Gignac < <mailto:suzie.r.gignac@ca.ey.com> suzie.r.gignac@ca.ey.com>

Sent: Thursday, December 8, 2016 7:37 AM

To: Petsche, Nadine (TBS)

Cc: Virani, Shyrose (TBS); Blake Langill

Subject: RE: Seeking advice

Hi Nadine:
Do you have time to discuss at 4pm? What is your timeline to come up with a position?
Thanks,
Suzie

———

From: Petsche, Nadine (TBS)
Sent: Wednesday, December 07, 2016 6:46:11 PM
To: Suzie Gignac
Cc: Virani, Shyrose (TBS)
Subject: Seeking advice

Suzie,

I haven't heard back from Blake, so sending you a question that we're dealing with right now. Please advise if you might be available for a short call tomorrow to discuss. Nadine

Assuming that e GBE sells additional shares in the market (above book value), but that the government does not sell any of its own shareholdings. As a result, the government's ownership is diluted. What would the impact be on the government's gooks under PSAB?

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Signed documents.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Signed documents
Date: Friday, June 23, 2017 16:27:02
Attachment 1: SOW and tax compliance.pdf

Hi Shyrose,

Please find enclosed the signed SOW and the tax compliance form.

The independence letter is being signed and sent to you by the various members of the team.

Have a great weekend.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

SOW and tax compliance.pdf

Appendix D – Tax Compliance Declaration Form

The Ontario Government expects all suppliers to meet their Ontario tax obligations on a timely basis. In this regard, proponents are advised that their Ontario tax obligations, if any, must be in good standing in order to be considered for a contract award (see Section 3.2.3 of the RFP). In order to be considered for a contract award, the proponent must submit the following tax compliance status statement and the following consent to disclosure:

Declaration

I/WE hereby certify that **KPMG LLP** (the "Proponent") at the time of submitting its proposal, is in full compliance with all applicable Ontario tax statutes, whether administered by the Treasury Board Secretariat or by the Canada Revenue Agency, and that, in particular, all returns required to be filed have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained; or the Proponent will take all necessary steps prior to being considered for contract award in order to be in full compliance with all applicable Ontario tax statutes.

(Please check applicable box)
The Proponent ☑ is / ☐ is not a corporation subject to Ontario corporate tax under the *Taxation Act, 2007* (Ontario).
(Please insert Proponent's Business Number) 122363153

Consent to Disclosure

The Proponent consents to the Ministry of Finance releasing the taxpayer information to the Ministry of Finance as necessary for the purpose of verifying the Proponent's compliance with Ontario tax statutes.

The Proponent consents to the Ministry of Finance releasing taxpayer information to the Requesting Ministry as necessary for the purpose of verifying the Proponent's compliance with Ontario tax statutes.

Dated at Toronto this 23 day of June 20 2017.

for Gordon.

(Authorized signing officer)

John Gordon PARTNER

(Print Name) **(Title)**

I have authority to bind the Proponent.

Branch:	**Accounting Policy and Financial Reporting**
Phone number:	**416-325-8027**
Email:	**Nadine.petsche@ontario.ca**

16. *Knowledge Transfer*: The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to the scope of this Statement of Work ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Br. 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: N. Petsche

Name: NADINE PETSCHE

Title: Director, Accounting Policy & Financial Reporting

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: Michel Picard

Name: Michel PICARD

Title: PARTNER

I have the authority to bind the Vendor.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* – The Vendor must keep the Client informed of status, including progress reports and any other types of reports or reporting requirements, as described in the Vendor's submission.

9. *Contingency Plan* – The Vendor must manage potential areas wherein problems may arise in accordance with its contingency planning practices as described in the Vendor's submission.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the Per Diem Charges no later than 10 Business Days after the end of each quarter.**

    Billing statements should include **dates, hours worked and services performed** .

14. *Names and Roles of Vendor's Personnel:*

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	Complex Accounting Advisory Services
Bailey Church	Intermediate Consultant	"
Andrew Newman	Back-up/Subject Matter Expert	"
Janet Allen	Back-up/Subject Matter Expert	"
Lois Ouellette	Partner	"
Jeremy Destefanis	Senior Manager	"
Clever Ngorima	Senior Manager	"
Alexandra Duret	Senior Manager	"
Dennis Weatherdon	Senior 3 in Ottawa	"

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 7, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* – Except where prohibited by applicable law, regulation or professional standards, the Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* **C$299,000,** plus HST

4. *Project Start Date:* **June 7, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 4 months with no increase to the Maximum Price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

SOW - KPMG attachment.docx.rtf

From: Petsche, Nadine (TBS) []
To: Bernard, Dena (TBS) [Dena.Bernard@ontario.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: SOW - KPMG attachment.docx
Date: Wednesday, May 31, 2017 17:57:26
Attachment 1: SOW - KPMG attachment.docx

Dena,

We are awaiting the signed award memo from Karen Hughes' office. Once received, we'll want to advise the successful and unsuccessful bidders. I'm just attaching a copy of the draft SOW for KPMG.

I'll let you know once we hear back and hope to be able to complete the paperwork ASAP afterwards.

Thanks.

Nadine

SOW - KPMG attachment.pdf

4STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 1, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

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5. *Project End Date:* **August 30, 2018 (with an option to extend 4 months with no increase to the Maximum Price)**

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- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
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- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

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    Billing statements should include **dates, hours worked and services performed** .

14. Names and Roles of Vendor's Personnel:

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**
Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

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    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

SOW.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: SOW
Date: Wednesday, June 21, 2017 10:22:26
Attachment 1: confidentiality agreement.doc
Attachment 2: SOW.DOCX

Hi Shyrose,

Please find enclosed our comments on the SOW and confidentiality agreement.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

T 416 777 8414

M 416 560 2569

mpicard@kpmg.ca

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- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

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confidentiality agreement.pdf

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and for 5 years following the term of the Agreement between **KPMG LLP** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term for 5 years of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to use commercially reasonable efforts to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements, or as otherwise required in compliance with applicable law, regulation or professional standards. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain commercially reasonable measures to ~~ensure~~ protect the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain ~~the most~~ appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

Except as otherwise required in compliance with applicable professional standards, t~~T~~he undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Nothing in this agreement shall prevent the Vendor from conducting its engagements for the Treasury Board Secretariat in accordance with firm policies and professional standards, or from conducting its normal review and quality assurance processes with regard to engagements for the Treasury Board Secretariat.

Name: _____ Signature: _____

Date: _____

Witness: _____ Signature: _____

Date: _____

SOW.pdf

STATEMENT OF WORK- MINISTRIES

Statement of Work for Management Consulting Services

This Statement of Work no. **TBS-OTB-OPCD-21** made in duplicate and effective **June 7, 2017**

KPMG LLP (the "Vendor") and Her Majesty the Queen in Right of Ontario (the "Client") as represented by the President of the Treasury Board enter into this Statement of Work pursuant to the Master Agreement for Management Consulting Services made as of **June 16, 2014** between the Vendor and Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services (such Master Agreement, as from time to time amended, is referred to as the "Master Agreement"). This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client.

In consideration of their respective agreements set out below, the parties agree as follows:

1. *Structure* - The terms and conditions of the Master Agreement are hereby incorporated by reference in this Statement of Work to the same effect as if fully set out in this Statement of Work. This document and the Master Agreement together comprise a separate Statement of Work between the Vendor and the Client. All capitalized terms used in this Statement of Work without definition have the meanings ascribed to them in the Master Agreement. In the event of any conflict or inconsistency between any term or provision of this Statement of Work and any term or provision of the Master Agreement, the terms and provisions of the Master Agreement shall govern.

2. *Statement of Work* — Except where prohibited by applicable law, regulation or professional standards, t~~T~~he Vendor agrees to provide to the Client, and the Client agrees to acquire from the Vendor, the Services and Deliverables described in this Statement of Work upon and subject to the terms of this Statement of Work.

3. *Maximum Price:* C$**$299,000,** plus HST

4. *Project Start Date:* **June 7, 2017**

5. *Project End Date:* **August 30, 2018 (with an option to extend 4 months with no increase to the Maximum Price)**

   The Client may, by giving written notice to the Vendor no later than 10 days before the initial Project End Date, extend the agreement for up to 4 additional months, ending December 31, 2018. Additionally, the Client may engage the Vendor in optional follow-on work that will result in changes to the scale and/or scope of the engagement. All additional work will be set out in a mutually agreed upon Change Order in accordance with the terms of the Master Agreement.

6. *Scope of Services and Deliverables* - The Services and Deliverables to be provided by the Vendor under this Statement of Work include the following:

   Working with management of OPCD's Accounting Policy and Financial Reporting Branch (APFR), the consultants will be expected to provide support for accounting analysis related to:

   - Consolidation of the Province's electricity sector entities,
   - Control assessments related to electricity sector entities
   - The impact of accounting changes by consolidated organizations on the Province's consolidated financial statements.
   - If required the service provider will be expected to work with OPCD to present findings and analysis to the Office of the Auditor General.

The consultants may be required to perform the following duties

- Develop issues notes summarizing the analysis and conclusions as input to the Province's financial accounting and reporting processes.
- Collaborate with OPCD and other stakeholders to gather and assess relevant information necessary to inform the analysis
- Present issues paper to senior management
- Support OPCD in presentation of issues analysis and conclusions to the Office of the Auditor General

7. *Ownership and Licences* - **Attachment D** of the Master Agreement forms a part of this Statement of Work.

8. *Communications and Reporting* – The Vendor must keep the Client informed of status, including progress reports and any other types of reports or reporting requirements, as described in the Vendor's submission.

9. *Contingency Plan* – The Vendor must manage potential areas wherein problems may arise in accordance with its contingency planning practices as described in the Vendor's submission.

10. *Work Location* – All meetings will be within Greater Toronto Area.

11. *Working Hours* – The Client's normal working hours are 7.25 hours per day, normal working hours are between 8:15 a.m. to 4:30 p.m., Monday to Friday inclusive. If required, the Vendor must provide Services outside of these normal working hours and on non-Business Day(s).

12. *Administrative Services and Supplies* – All administrative services and supplies used by the Vendor to complete the Services will be provided to the Client at no additional charge.

13. *Billing and Payment Process* - **The Vendor shall provide the Client with quarterly billing statements that outline the Per Diem Charges no later than 10 Business Days after the end of each quarter.**

    Billing statements should include **dates, hours worked and services performed** .

14. Names and Roles of Vendor's Personnel:

Individual's Legal Name	Individual's Role and Experience Level	Service Category
Michel Picard	Senior Consultant	Accounting
Bailey Church	Intermediate Consultant	
Andrew Newman	Back-up/Subject Matter Expert	
Janet Allen	Back-up/Subject Matter Expert	
Lois Ouellette	Partner	
Jeremy Destefanis	Senior Manager	
Clever Ngorima	Senior Manager	
Alexandra Duret	Senior Manager	
Dennis Weatherdon	Senior 3 in Ottawa	

15. *Invoices* - Invoices for payment of any charges under this Statement of Work shall be sent to:

Client: **Treasury Board Secretariat**
Office of the Provincial Controller Division
Branch: **Accounting Policy and Financial Reporting**

Phone number: **416-325-8027**
Email: **Nadine.petsche@ontario.ca**

16. *Knowledge Transfer:* The Vendor will work closely with the client to ensure knowledge transfer to the client's designated staff through each phase of the project and at key milestone opportunities. The Client will also be able to access to the Vendor's Collaboration Site which will help with Knowledge Transfer.

17. *Destruction of Information* - The Vendor shall destroy all information contained on any media, if requested to do so by the Client, except as required to be retained in accordance with professional standards requirements. The Client may choose to witness this destruction. The Vendor shall provide a certificate of destruction to the Client, if requested to do so by the Client.

18. "Future Engagements/Transactions – The information that will be handled by the Vendor under this Statement of Work is highly confidential and can provide the holder with a potential unfair or improper advantage in future engagements/transactions related to the scope of this Statement of Work ("Future Engagement/Transaction") where open competition or negotiation occurs. As a result, the Vendor acknowledges that the firms or persons that have been contracted with or retained to work on this initiative can, depending on the engagement/transaction, become ineligible to submit a submission, assist in the preparation of a submission, or provide advice on any Future Engagement/Transaction that arises from or follows this assignment, where a potential unfair or improper advantage arises as a result of the confidential information obtained under this Statement of Work.

    The names of all advisors to this process may be published in any such Future Transactions to ensure adherence by potential bidders to the above requirement.

19. Indemnity – the indemnity set out in the Master Agreement applies to this assignment.

20. *Client Representative and Receipt of Notices*

Client's address for receipt of notices:	Treasury Board Secretariat Office of the Provincial Controller Division Accounting Policy and Financial Reporting Branch 7 Queen's Park Cres, 2nd Flr Toronto ON M7A 1Y7
Client Representative:	Nadine Petsche
Telephone number:	416-325-8027
E-mail:	Nadine.Petsche@ontario.ca
Backup Client Representative:	Shyrose Virani
Telephone number:	416-325-1448
E-mail:	Shyrose.Virani@ontario.ca

21. *Vendor Representative and Receipt of Notices*

Vendor's address for receipt of notices:	333 Bay Street, Suite 4600 Toronto ON M5H 2S5
Vendor Representative:	Michel Picard, Partner, Accounting Advisory
Telephone number:	416-777-8414
E-mail:	mpicard@KPMG.ca
Backup Vendor Representative:	Bailey Church, Partner, Accounting Advisory
Telephone number:	613-212-3698
E-mail:	bchurch@kpmg.ca

IN WITNESS WHEREOF the parties hereto have executed this Statement of Work as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by **the President of the Treasury Board**

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[INSTRUCTIONS: INSERT LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have the authority to bind the Vendor.

SoW and Master Agreement - EY.rtf

From: Hosick, Sarah (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: SoW and Master Agreement - EY
Date: Thursday, October 11, 2018 12:52:47

Hi Shyrose,

Can you please send me the Statement of Work dated October 31, 2016, and Master Agreement dated June 16, 2014 both with EY? I believe it would be called Complex Accounting. (Suzie Gignac and Blake Langill)

Thanks

Sarah

Statement re_ accounting implications of provincial guarantee.pdf

From:	Veinot, Cindy (TBS)
To:	HARTWICK Ken -FINANCE; Kim Marshall
Cc:	Hosick, Sarah (TBS)
Subject:	Statement re: accounting implications of provincial guarantee
Date:	September 20, 2017 9:08:00 AM

Hi Ken and Kim,

As you may know, the provincial guarantee (now called Provincial Protection and Assurances Agreement) is tracking to Treasury Board on Monday (September 25) for approval. Given you won't have an updated opinion from KPMG at that time nor an updated letter from EY incorporating the impact of this agreement, the request has been made for each of IESO and OPG to confirm back from an accounting perspective the analysis completed with the respective auditor and a comment on the impact, if any, of this agreement on the accounting by your respective organizations on the Fair Hydro Plan.

Can you let me know if that is doable and send through your comments by EOD tomorrow?

Thanks,

Cindy

Suggestions for edits (NPP) .rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: Suggestions for edits (NPP)
Date: Tuesday, March 21, 2017 22:01:45

Thanks Stephen.

For Emma's (MOE's) purpose, the PSAS reference I quoted earlier as quite relevant to addressing the remaining terminology is:

0.14 There are a variety of ways to govern the financial and operating policies of an organization. For example:

(a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;

(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or

(c) a government may veto, overrule or modify the financial and operating policies established by an organization.

With the above guidance in mind, to further mitigate the accounting risk, I would further suggest edits as noted below. I will review additional feedback from H1 and provide additional comments, if in any, shortly (I hope).

Nadine

****

"Any Trustee initiated changes to the Trust Declaration ARE EXPECTED TO BE consistent (vs. can't conflict with) with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably MODIFY (vs. clarify) the principles set forth in the Principles [npp – these changes will ensure

consistency with messaging that the principles are non-compulsory and subject to change vs. clarification]

Trust Declaration:

Section 6.1 of the Trust Declaration …subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that ~~no~~ any amendments are expected to be consistent with ~~shall not conflict with~~ the principles set forth in the Principles Annex and to take into consideration the suggested scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] [npp – see above – consistency in messaging important]

3.2Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. ~~If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, Where the parties agree under 3.2, to an extension of the date, it is expected that so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust~~, If under 3.2, the parties agree that the term of the Agreement may be extended, ~~will~~ it is expected that the Trust will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

Schedule C (last para)

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient is requested to advise the Province through the quarterly report back process on the status of any activities involving the above suggested activities. (insert requirement under report backs) [npp – change recommended to eliminate suggestion that activities as noted are compulsory]

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees ~~shall~~ is expected to meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

Other matters:

-

Consider if current description of Board of Trustees would preclude H1 from being a Trustee.

5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. (Npp- can refer to alignment with principles in province's procurement directive (provided in separate email).

From:	Virani, Shyrose (TBS)
To:	Petsche, Nadine (TBS); Veerman, Alan (MOF); Picard, Michel (mpicard@kpmg.ca); Colley, Matthew (CA - Toronto) (mcolley@deloitte.ca); cveinot@deloitte.ca; Patel, Bharat (TBS); sgeraghty@torys.com; Graham, Helen (TBS); Hatzis, Len (TBS); Murji, Ferina (TBS); Compagnone, Lisa (TBS); Dyczkowski, Marilyn (TBS)
Cc:	"Ng, Edwin K."; Walter, Craig; Chinchon, Francisco (OFA)
Subject:	Teleconference on the H1 Governance Agreement
Start:	June 12, 2015 9:30:00 AM
End:	June 12, 2015 10:15:00 AM
Location:	APFR Boardroom, teleconference 416-212-8014 passcode 1474532#

Tomorrow’s meeting.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Tomorrow's meeting
Date: Thursday, July 13, 2017 21:46:25
Attachment 1: image001.gif

Nadine and Cindy,

Would it be possible to change the time of tomorrow's meeting? Suzie and I are both available the following times: before 8:30, 9:15-10:30, 2:30-3:00, 4:15-5:30. If rescheduling doesn't work for you, Suzie will be able to be on the call at 8:30.

Sorry for the late request.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

Fax: 416 943 3767 | EY/Comm: 1657762

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image001.pdf

Tomorrow’s meeting.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
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Sorry for the late request.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

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image001.pdf

Touch base.rtf

From: Virani, Shyrose (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: Touch base
Date: Tuesday, June 27, 2017 11:17:28

Nadine to moderate

Touch base.rtf

From: Virani, Shyrose (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: Touch base
Date: Tuesday, June 27, 2017 11:17:28

Nadine to moderate

Touch base.rtf

From: Virani, Shyrose (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
Subject: Touch base
Date: Tuesday, June 27, 2017 11:17:28

Nadine to moderate

touch base (regs).rtf

From: Virani, Shyrose (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]
Subject: touch base (regs)
Date: Wednesday, June 07, 2017 14:09:03

Cindy to moderate

touch base (regs).rtf

From: Virani, Shyrose (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]
Subject: touch base (regs)
Date: Wednesday, June 07, 2017 14:09:03

Cindy to moderate

TOR_2024-#12887993-v15-Affordability_Fund_Trust_□Declaration_of_Trust_-_Blakes_Comments_(March_14_2017).pdf

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

TABLE OF CONTENTS

Page

[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles

specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[4]

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[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

[4] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes

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that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case

without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and

correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity

Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act

or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

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[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

[6] NTD: Consider and, if retained, integrate with Board concepts.

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to section 7.2, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

[7] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 [Except in exceptional circumstances,] a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be [a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[8];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

[9] NTD: Ministry to confirm applicable Directive(s).

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures

for Buildings

Wall Insulation (including installation):

cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Basement Insulation (including installation):

mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings

Vapour Barrier: 69009-CAN/CGSB-51.34-m86

If one or two component polyurethane foams are used, the products and installations must conform to:

- CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification.
- CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application.
- CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification
- CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps

(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)

Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: [(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity

Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. [NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee,

the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without

limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of [six] trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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[RELABEL HEADINGS AND REGENERATE TABLE OF CONTENTS]

DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as the Trustee, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada, as the Trustee, hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time. [Blakes: A Day 1 Administrative Services Agreement would likely be requested by Computershare to address the possibility of interim administrative issues. It would also be useful to the extent that it is necessary for someone to advise Computershare if an unforeseen event arises or amendments are required to the Declaration, in the event initial changes are necessary to make the Declaration acceptable to potential Board members. All of this is trying to avoid potential gridlock if something comes up and Computershare is unwilling to act without direction.]

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date specified as such or determined pursuant to the Transfer Payment Agreement[1], and (ii) the later of (x) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (y) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***License Agreement***" means any agreement under which the Trust or any Electricity Distributor possesses or acquires rights to use any trademarks, names, logos, copyrights, patents or other intellectual property for use in connection with communications or other dealings undertaken in relation to the Program, including for the purpose of branding, marketing and promoting the availability, terms and benefits of the Program to Primary Beneficiaries.

(o) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(p) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(q) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

[1] NTD: The TPA will provide that on an Event of Default (KPMG Comment- No! This is a problem…OPC Comment: Please see correspondence between the Province and the OAG w.r.t. transfer payment accountability provisions.) the remaining Assets will be paid over to the Government, on the basis that the Government's transfer thereunder is subject to such a reservation in circumstances of non-compliance. The TPA should also specify that the Trust will thereafter be wound up, which will tie in to this definition by way of the date so specified in the TPA. Accounting considerations to be discussed.

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(x) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.1 of this Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(y) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(z) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(aa) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(bb) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(cc) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the compliance by the Trustee of any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles

specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries. [Blakes: The intention has been to make the Principles and the Delegations clear and firm, so that MOE has greater certainty. There is scope for the Trustees to add to Principles. Uncertain why firm direction and delegations to LDCs would raise issues for the Trustee.]

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiaries by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**. On or as soon as practicable following the Final Distribution Date, the Trustee shall distribute all of the Assets (including capital or income) existing at that time to the Residual Beneficiaries, in each case in the amounts and to the extent determined by Trustee in its discretion hereunder[2] and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as

[2] NTD: Consider if principles should be included regarding the maximum amount any particular charity may receive.

expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.[3]

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.[4]

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[3] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. . [Blakes: See response as #4 (below) with respect to "manage" the assets.]

[4] Consider limiting this broad power. (KPMG Comment: Why? Be careful) OPC Comment: Not sure what these comments refer to, but worth discussing to confirm. [Blakes: We could not think of a case where the trustee would be required to dispose of assets, and wondered if a broad power should recognize

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will (a) seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes

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that dispositions are not intended. We are okay if the power is intact, as long as MOE is comfortable with that as a possibility.]

contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, and (b) obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's schedule of fees delivered as of the date hereof as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall [Blakes: Someone will need to settle funds to create a valid trust] be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration and any contract of the Trust entered into in accordance with this Declaration, in each case

without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(k) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(l) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(m) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(n) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(o) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and in accordance with the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(p) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and

correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event prior to •, 2017, the Original Trustee shall appoint the Persons contemplated by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Board make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, [six] (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee. The Original Trustee may exercise its discretion in selecting such individuals for such appointment subject to compliance with the "Selection Factors" set forth in the Trustee Replacement Annex or, in the absence of such exercise, shall select from among individuals who would, if appointed, provide for compliance with the "Selection Factors" set forth in the Trustee Replacement Annex based on the alphabetic order of the their respective surnames. Upon the appointment of [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than [one] month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the members of the Board of Trustees shall be a quorum irrespective of the number of members in office, provided that quorum will not exist if the majority of members voting on a decision are Provincial employees or representatives. The decision of the majority of the members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate, having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of trustees will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity

Distributor shall recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expenses*** and ***Reimbursements to Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. The Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees. Whenever the Trustees are unable to agree in relation to the commission or omission of any act

or howsoever in the execution of the Trust, the decision of a majority of the Trustees shall prevail.[5]

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. [ADD BACK THE PROVISO?] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:[Blakes: Discuss MOE certainty of Declaration and why this flexibility/Trustee discretion would be needed or appropriate. Deletion assumes that TPA may include limitations on amendments.]

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees[6];

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

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[5] NTD: KPMG Comment: Watch carefully OPC Comment: Agree – need to watch the final details as developed.

[6] NTD: Consider and, if retained, integrate with Board concepts.

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to section 7.2, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.[7]

7.2 Termination and Distribution of Assets

Subject as hereinafter provided, the Trustee may terminate the Trust and wind up its affairs on such date as the Trustee, in its sole and absolute discretion, may determine and after paying or adequately providing for the payment and satisfaction of all debts, liabilities and obligations of the Trust and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Notwithstanding the foregoing, the Trustee shall in any event terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, such assets shall promptly be paid to the Residual Beneficiaries in accordance with Section 3.3.

[7] NTD: Consider early termination scenarios.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to [, but shall not be specifically bound by,] the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 [Except in exceptional circumstances,] a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement [with an applicable Electricity Distributor] to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be [a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP];

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it

is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of non-commercial electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and in accordance with the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including regarding the availability, terms, conditions and intended purposes of Program[8];

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee. [Blakes: These statements are included to substantiate the very significant delegation of decision making (dispositive powers) to and influence of the Electricity Distributors.]

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the

[8] Consider if the Trustees should control the messaging to ensure consistency across the Province.

extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) [the Ontario Energy Board];

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 Eligible Measures shall be identified having regard to the following (the "**Measures Factors**"):

(i) electricity cost savings [NTD: Insert generic list of considerations relevant to the identification of the applicable spending uses].

(ii) primary home heating sources

[Blakes: MOE may wish to consider:

(iii) is the measure generally expected to result in improved energy conservation by a Primary Beneficiary if properly installed and used;

(iv) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(v) has an independent source recognized the measure as being (x) energy efficient in design, (y) more energy efficient than similar products available in the market intended for similar usage, or (z) effective in promoting energy conservation;

(vi) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(vii) is the measure broadly available to residents across different areas and regions of the Province;

(viii) is it reasonable to expect that the measure would, over its anticipated useful life, generate greater costs savings in respect of electricity efficiency or conservation than the cost of the measure itself; or

(ix) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.]

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 Unless otherwise specified by the Board of Trustees, the measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries.

3.2 [NTD: Insert any expectations of the Province regarding associating the Program to the Government, including in any external communications to or marketing directed at Electricity Distributors and Primary Beneficiaries.]

3.3 [NTD: Indicate that the Trustee would be free to enter into License Agreements with the Province, provided that the terms of such License Agreements are consistent with the Purpose and the Program, and that such License Agreements may permit the sub-license of IP to Electricity Distributors and permit the engagement of the Province to provide services related to the use of related IP rights.

3.4 [NTD: Insert any expectations regarding the observance of License Agreements]

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust][Affordability Fund] and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the principles outlined in the [Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive][9], the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is [determined][manifestly demonstrated by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.]

[9] NTD: Ministry to confirm applicable Directive(s).

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to [March 31, 2019].

SCHEDULE A TO THE PRINCIPLES ANNEX
INITIAL ELIGIBLE MEASURES[10]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - $^1/_2$" inside diameter – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Pipe Insulation - $^3/_4$ " inside diameter - – foam, meets ASTM –C547-00, minimum $^3/_4$" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[10] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures

for Buildings

Wall Insulation (including installation):

cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Basement Insulation (including installation):

mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings

Vapour Barrier: 69009-CAN/CGSB-51.34-m86

If one or two component polyurethane foams are used, the products and installations must conform to:

- CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification.
- CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application.
- CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification
- CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps

(Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)

Ductless Multiport Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Multiport Ductless Heat Pump **[NTD: Add details pertaining to heat pumps]**

Cold Climate Ducted Heat Pump **[NTD: Add details pertaining to heat pumps]**

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Transfer Payment Accountability Directive/Travel, Meal and Hospitality Expenses Directive. Please forward a Word version if available.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: [(a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements].

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. It is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would be expected (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) to address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary [or group of related Primary Beneficiaries] located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. Promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. Promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the distribution made to or on behalf of the Primary Beneficiary, the Electricity

Distributor shall promptly return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Promotion of the Program**

i. [NTD: Insert any specific items regarding the use of IP by Electricity Distributors]

d. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies to facilitate the Program**

i. The Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

e. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. [NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee,

the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

f. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

g. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

h. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

i. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

[NTD: MOE, please advise whether you wish to address any of the following matters upfront in an administrative services agreement: (1) LDC compliance with privacy law requirements/ money laundering laws; (2)legal representation if joined in any product warranty claims (i.e., to the extent the Trust is sued in connection with a purchase of Eligible Measures); (3)specific manner of flowing money to manufacturers and suppliers of Eligible Measures;(4) logistics of banking and cash flow mechanics and related record-keeping; (5) production of information for Trustee to satisfy legal requirements applicable to the Trust (i.e., tax; record keeping); (6) preparation of tax remittances for beneficiaries (applicable?);(7) required communications to Primary Beneficiaries on behalf of the Trust (including to comply with applicable laws);(8) preparation and submission of applications, etc., that may be contemplated by the Program;and (9) LDC fault-based termination scenarios]

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [NTD: Selection criteria are under consideration, including to address any accounting considerations]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be a representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without

limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual who is willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of [six] trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

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ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) [it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.][1]

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

[1] NTD: Consider if this sort of fail-safe is helpful.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established by the Trustee, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 5.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Province is not obligated to provide any Funds to the Recipient until the Requirements (as specified and defined in Schedule C) have been satisfied.

4.3 Use of Funds and Project. The Recipient will use, apply and distribute the Funds only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 Maximum Funds. The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 Funding, Not Procurement. For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province[2]; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it will do so through a process that promotes the best value for money and will take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 No Conflict of Interest. The Recipient will carry out the Program and use, apply and distribute the Funds without an actual, potential or perceived conflict of interest.

6.2 Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions[3],
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

6.3 Disclosure to Province. The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient will:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be requested by the Province from time to time in accordance with the timelines and content requirements specified by the Province;

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[2] NTD: Consider in relation to promotional objectives and in the context of any License Agreement.
[3] NTD: Need to consider how this works in relation to Administrative Services Agents. Is the intention that the Trustee will be in breach of the Agreement if an Administrative Services Agent is itself in a conflict, or should this be recast to require the Trustee to seek remedies (i.e., termination) if an Administrative Agent is determined to be (diligence requirement?) in breach of the conflicts of interest requirements contemplated in the Permitted Delegations Annex?

(c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and

(d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signatory.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents and information to ensure that funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights[4] provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program -related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.[5]

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

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[4] NTD: Does the AG have any authority in respect of an non-controlled trust? If not, this probably needs to be rephrased so that the Trustee agrees to facilitate the Province's compliance with this statutute.
[5] NTD: Consider in light of possible additions to the Declaration/Principles regarding the promotion of the Program.

10.0 INSURANCE

10.1 Insurance. The Recipient [has made enquiries to confirm][believes] that insurance policies of the type contemplated in Schedule C are generally available in Canada.[6]

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an [Insolvency Event] shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period[7];

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies under the Agreement against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient [that can reasonably be traced or attributed to the Funds][after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer]; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

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[6] NTD: Consider if this is helpful from an accounting perspective.
[7] NTD: Consider whether to provide for a notice period within the specific Events of Default, rather than making cures entirely in the Provinces discretion.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [8]

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

[8] NTD: Discuss.

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.[9]

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0. [NTD: References to be update/confirmed.]

- END OF GENERAL TERMS AND CONDITIONS -

[9] NTD: Consider further in the context of the Board of Trustees

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

Notwithstanding anything to the contrary contained in the Agreement or the Declaration of Trust, until such time as each of the following conditions have been completed to the satisfaction of or waived by the Province (the "**Requirements**"), the Recipient shall not distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) shall have occurred.

2. An administrative services agreement[10] shall have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Procedures have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient has obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. To demonstrate satisfaction, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms such insurance coverage and will make available to the Province a copy of each applicable insurance policy.

Each of the Requirements may be accomplished by the Recipient entering into such agreements as may be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust that the Trustee determines is reasonably required in order to accomplish the Requirements. The Province shall provide notice in writing to the Recipient when the Requirements have been completed to the satisfaction of the Province. Funds may be expended to pay the expenses of the Trustee in completing the Requirements.

[10] NTD: Consider this in light of the need for individual administrative services agreements with each of the Electricity Distributors. This may relate to the original idea that a single administrative services agreement would be entered into with Hydro One.

SCHEDULE “D”

Recipient’s Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule “C”) and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province’s Travel, Meal and Hospitality Expenses Directive. Entities receiving funding from the Recipient are also expected to adhere to the Province’s Travel, Meal and Hospitality Expenses Directive and the Recipient is expected to request the same of such Entities. Alcohol and First-Class travel are not considered eligible claims and disbursements for hospitality, incidental or food expenses shall not be covered by the Funds, including the following:

    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario’s Public Service Procurement Directive.

SCHEDULE “E”

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[11]

[11] Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.

SCHEDULE "F"

REPORTING

Reports will be provided quarterly on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be provided annually on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports shall be submitted to the Province within one month following the end of the reporting period that they represent.

The Recipient shall prepare six (6) Quarterly Reports and two (2) Annual Report as outlined below. Reports shall explicitly demonstrate impact of Province's funding and address report detail requirements listed below.

NAME OF REPORT	DUE DATE
Quarterly Report #1	July 31, 2017
Quarterly Report #2	October 31, 2017
Quarterly Report #3	January 31, 2018
Annual Report #1	April 30, 2018
Quarterly Report #4	July 31, 2018
Quarterly Report #5	October 31, 2018
Quarterly Report #6	January 31, 2019
Annual Report #2	April 30, 2019

Requirements for Quarterly Reports

- The Recipient will provide Quarterly Reports which will include a report back on the Trustee-developed performance management criteria. Quarterly Report requirements will be determined from time to time by the Province, and initially will include:

25.0 Amounts disbursed by the Recipient in the previous quarter. It is expected that this information will be provided at the electricity distributor level.
26.0 Total Affordability Fund interest accrued to date
27.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
28.0 Any challenges or modifications required to the application, funding, or eligibility processes/rules
29.0 Key activities planned for the upcoming quarter

Requirements for Annual Report

- The Recipient will provide an Annual Report to the Province which will include a report back on the Trustee-developed performance management criteria. Annual Report requirements include:

30.0 A description of electricity distributor application process and the criteria used by the Recipient to manage funds.
31.0 Identify and describe any challenges with achieving goals and proposed solutions, if applicable.
32.0 Lesson learned.

33.0 Electricity distributor and customer feedback
34.0 Amounts disbursed by the Recipient in the previous year. It is expected that this information will be provided at the electricity distributor level.
35.0 Key activities and achievements from the quarter being reported, including number of participant households per electricity distributor, average participant incentive cost per electricity distributor, and uptake of energy efficiency measures per electricity distributor
36.0 Total Affordability Fund interest accrued to date

- As part of the Annual Report, the Recipient will also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

12888010.9

Treasury Board Secretariat - Confidentiality Agreement .rtf

From: Weakley, Donna (CA - Toronto) [dweakley@deloitte.ca]
To: Gary, Trevor (CA - Toronto) [tgary@deloitte.ca]; Colley, Matthew (CA - Toronto) [mcolley@deloitte.ca]; Grindley, Clair (CA - Toronto) [clgrindley@deloitte.ca]; Bazile, Max (CA - Toronto) [mbazile@deloitte.ca]; Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
CC: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Treasury Board Secretariat - Confidentiality Agreement
Date: Wednesday, October 19, 2016 11:51:26
Attachment 1: confidentiality agreement.doc

I received this request from Shyrose at the Treasury Board. She does not have your email addresses, so if you would see her request below and return directly to her it would be appreciated.

Thanks,

Donna

From: Virani, Shyrose (TBS) [mailto:Shyrose.Virani@ontario.ca]
Sent: Wednesday, October 19, 2016 11:27 AM
To: Weakley, Donna (CA - Toronto) <dweakley@deloitte.ca>
Subject: Confidentiality Agreement

Hi Donna

As per our telephone conversation, attached, please find a confidentiality agreement. Please give to:

1. Trevor Gary
2. Matt Colley
3. Clair Grindley
4. Max Bazile
5. Kerry Danyluk

Project date was July 21, 2016 so if they can please back date it according to that date, that would be wonderful. Kindly return it back to me at your earliest.

Thanks

Shyrose

Confidentiality Warning:

This message and any attachments are intended only for the use of the intended recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank You

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Avertissement de confidentialité:

Ce message, ainsi que toutes ses pièces jointes, est destiné exclusivement au(x) destinataire(s) prévu(s), est confidentiel et peut contenir des renseignements privilégiés. Si vous n'êtes pas le destinataire prévu de ce message, nous vous avisons par la présente que la modification, la retransmission, la conversion en format papier, la reproduction, la diffusion ou toute autre utilisation de ce message et de ses pièces jointes sont strictement interdites. Si vous n'êtes pas le destinataire prévu, veuillez en aviser immédiatement l'expéditeur en répondant à ce courriel et supprimez ce message et toutes ses pièces jointes de votre système. Merci.

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confidentiality agreement.pdf

CONFIDENTIALITY AGREEMENT

Confidentiality Agreement

During and following the term of the Agreement between **Deloitte Inc.** (the "Vendor") and Her Majesty the Queen in right of Ontario as represented by the **Treasury Board Secretariat** and during and following the term of each Statement of Work entered into by the Vendor and pursuant to the Agreement (collectively, the "Agreements"), the undersigned agrees with the Vendor to keep confidential and secure all Confidential Information to which the undersigned may have access to in the course of the performance of services pursuant to any of the Agreements (including requests for services) or otherwise in connection with any of the Agreements (including requests for services). "Confidential Information" means all information of the Ontario Public Service and of the Client's subcontractors at any tier of subcontracting that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with any of the Agreements. "Ontario Public Service" means the ministries and other administrative units of Her Majesty the Queen in right of Ontario ("Ontario") over which ministers of Ontario preside, and for the purposes of this Confidentiality Agreement, includes Ontario and Ontario's agencies, boards, commissions and Crown corporations, offices of an officer of the Legislative Assembly or of the Ontario Legislature and Listed Entities, and "**OPS**" has the same meaning.

The undersigned acknowledges that the Client is bound to maintain custody of or control over information, material and records, however recorded, within the meaning of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The undersigned agrees to comply with the privacy provisions of the Agreements in the course of providing services pursuant to the Agreements.

The undersigned shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the purpose of performing services pursuant to the Agreements. The undersigned shall not copy any Confidential Information, in whole or in part, unless copying is essential for the performance of services pursuant to the Agreements. On each copy, the undersigned must reproduce all notices that appear on the original.

The undersigned acknowledges that the Vendor is obliged to implement and maintain measures to ensure the security and integrity of Confidential Information and to protect it against loss, alteration and destruction and against access by unauthorized persons, and to select, implement, use and maintain the most appropriate products, tools, measures and procedures to do so. The undersigned covenants and agrees to adhere to all of the measures instituted by the Vendor.

The undersigned agrees to return all Confidential Information, including all copies and portions thereof, to the Vendor or to the Client with no copy kept by the undersigned as soon as the need to possess them ends, at the request of the Client, and in any event, prior to concluding the performance of services pursuant to the applicable Agreements.

Name: _____ Signature: _____

Date: _____

Witness: _____ Signature: _____

Date: _____

Triton - Security Screening.rtf

From: Virani, Shyrose (TBS) []
To: suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; ivan.chittenden@ca.ey.com [ivan.chittenden@ca.ey.com]
Subject: Triton - Security Screening
Date: Thursday, January 26, 2017 15:54:09

Hi

Triton will be contacting you for the above check, kindly provide all necessary information.

Thanks

Shyrose Virani

Unknown.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject:
Date: Tuesday, March 21, 2017 13:27:24

---

7. Establish or amend the mission or mandate. I believe the answer is yes. The trust is established to achieve the objective of the TPA. I believe the answer should always be yes for a trust. That being said, I am not sure that this alone is sufficient to say that the Province has control.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca
LinkedIn

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At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.

Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Unknown.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject:
Date: Tuesday, March 21, 2017 13:13:40
Attachment 1: RE: Revised Declaration of Trust
Attachment 2: RE: Revised Declaration of Trust

Hi Michel.

n

RE_ Revised Declaration of Trust.pdf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Ranalli, David (ENERGY) [David.Ranalli@ontario.ca]; Schachtschneider, Michelle (ENERGY) [Michelle.Schachtschneider@ontario.ca]; Qureshi, Musab (ENERGY) [Musab.Qureshi@ontario.ca]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; Syed, Usman (ENERGY) [Usman.Syed@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: Revised Declaration of Trust
Date: Monday, March 20, 2017 17:27:06
Attachment 1: imagefaefb7.GIF
Attachment 2: TOR_2024-#12888010-v11-Transfer_Payment_Agreement_(Affordability_Fund_Trust).DOCX
Attachment 3: TOR_2024-#12888010-vpdf-Transfer_Payment_Agreement_(Affordability_Fund_Trust).PDF

TPA revised and attached (same caveat as below). Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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From: ASHBOURNE, STEPHEN
Sent: Monday, March 20, 2017 4:50 PM
To: 'Paul.Johnson3@ontario.ca'; 'David.Ranalli@ontario.ca'; 'Michelle.Schachtschneider@ontario.ca'; 'Musab.Qureshi@ontario.ca'; 'Emma.Schwab-Pflug@ontario.ca'; 'Usman.Syed@ontario.ca'; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; VINER, JON
Subject: RE: Revised Declaration of Trust

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Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: ASHBOURNE, STEPHEN
Sent: Monday, March 20, 2017 1:02 PM
To: 'Paul.Johnson3@ontario.ca'; 'David.Ranalli@ontario.ca'; 'Michelle.Schachtschneider@ontario.ca'; 'Musab.Qureshi@ontario.ca'; 'Emma.Schwab-Pflug@ontario.ca'; 'Usman.Syed@ontario.ca'; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
Subject: RE: TPA and Declaration of Trust Feedback

Please see the updated versions of the Documents, attached. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: ASHBOURNE, STEPHEN
Sent: Sunday, March 19, 2017 1:42 PM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca; 'Petsche, Nadine (TBS)'
Cc: PRESTAGE, JA; RAND, PAUL; VINER, JON
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Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: RAND, PAUL
Sent: Thursday, March 16, 2017 1:41 AM
To: Paul.Johnson3@ontario.ca; David.Ranalli@ontario.ca; Michelle.Schachtschneider@ontario.ca; Musab.Qureshi@ontario.ca; Emma.Schwab-Pflug@ontario.ca; Usman.Syed@ontario.ca
Cc: ASHBOURNE, STEPHEN; PRESTAGE, JA
Subject: RE: TPA and Deed Feedback

Attached are updated drafts reflecting comments discussed today.

Please forward to internal colleagues who may not be on the distribution.

Thanks.

Paul

Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

Begin forwarded message:

From: "Ranalli, David (ENERGY)" <David.Ranalli@ontario.ca>
To: "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>, "PRESTAGE, JA" <JA.PRESTAGE@blakes.com>
Cc: "Johnson, Paul (ENERGY/MEDEI/MRI)" <Paul.Johnson3@ontario.ca>, "Schachtschneider, Michelle (ENERGY)" <Michelle.Schachtschneider@ontario.ca>
Subject: Fw: TPA and Deed Feedback

Hello Stephen and Jay, please find attached Ministry of Energy comments attached.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Schwab-Pflug, Emma (ENERGY) <Emma.Schwab-Pflug@ontario.ca>
Sent: Tuesday, March 14, 2017 7:51 PM
To: Ranalli, David (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI)
Cc: Syed, Usman (ENERGY); Qureshi, Musab (ENERGY); Di Tullio, Yvonne (ENERGY); Teare, Rebecca (ENERGY); Cook, Cory (ENERGY); Gounden, Pratima (ENERGY); An, Tai (ENERGY); Lim, Janet (ENERGY); Sadasivan, Asokan (MEDG/MRIS); Petsche, Nadine (TBS); Desouza, Charlotte (ENERGY)
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Could you kindly share these with Blakes this evening. We have left some placeholders for additional input from CSD and OPCD (cc'd) and will look to provide additional comments at our call tomorrow with Blakes.

Our comments to the Trust Deed are on top of a clean version Blakes had sent. Our comments on the TPA are on top of a tracked version Blakes had sent. Apologies for the inconsistency – we ran into some version control issues on our end.

Charlotte (cc'd) will be in touch with regards to setting up a call with Blakes, as well as LSB, CSD and OPCD, tomorrow morning.

Thank you,
Emma

RE_ Revised Declaration of Trust1.pdf

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CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: Revised Declaration of Trust
Date: Monday, March 20, 2017 16:50:20
Attachment 1: imageb7be93.GIF
Attachment 2: TOR_2024-#12887993-v17-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).DOCX
Attachment 3: TOR_2024-#12887993-vpdf-Affordability_Fund_Trust_–_Declaration_of_Trust_-_Blakes_Comments_(March_14__2017).PDF

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Tel: 416-863-2400 Fax: 416-863-2653
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Paul Rand

Counsel

paul.rand@blakes.com

Dir: 416-863-3051

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Emma

Unknown.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject:
Date: Tuesday, March 21, 2017 11:29:29

1300.14 There are a variety of ways to govern the financial and operating policies of an organization. For example:
(a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;
(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or
(c) a government may veto, overrule or modify the financial and operating policies established by an organization.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

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From: Petsche, Nadine (TBS) []
To: Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject:
Date: Thursday, May 25, 2017 15:17:45

Materiality

Our objective in planning and performing our audit is to detect misstatements that are, individually or in the aggregate, material to the consolidated financial statements taken as a whole. We assess materiality on the basis of what is likely to change or influence the decisions of persons relying on the financial statements. Departures from the Canadian acceptable framework for public sector accounting could constitute a qualitative reason for a qualified audit opinion.

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From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject:
Date: Wednesday, February 22, 2017 10:52:15
Attachment 1: IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017 (2).pdf

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IESO - Accounting for Conservation Costs (Revised DRAFT)_February 17 2017 (2).pdf

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Mr. Phil Bosco
Manager, Technical Services Conservation & Corporate Relations
Independent Electricity System Operator
120 Adelaide Street West, Suite 1600
Toronto ON, M5H 1T1

February 17, 2017

Dear Mr. Bosco:

We have completed our engagement to assist you with understanding the accounting treatment for conservation and demand initiative costs. Our engagement was performed in accordance with our Statement of Work dated January 10, 2017 under our Agreement during the period January 13 to February 17, 2017. You requested that we amend the original Report to include consideration of the application of the US Governmental Accounting Standards Board guidance. This Report replaces the previously issued report dated January 19, 2017.

Results of our work

Based on our procedures performed during the period January 13 to February 17, 2017, we prepared the attached Report for your use. Management of the Company reviewed these documents for completeness, accuracy and reasonableness. Decisions regarding the Company's application of CPA Public Sector Accounting Standards ("PSAS") were made solely by the Company's management.

Background

Under the Statement of Work, our scope of services was to assist you with understanding the accounting for conservation incentive costs. The Ministry of Energy is currently exploring a potential financing arrangement for conservation and demand management ("CDM") initiative programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs.

Scope of our work

In connection with our engagement, we held discussions with and made inquiries of the IESO's personnel. We also obtained and read the Company's financial statements, certain limited accounting records, and certain computations prepared by the IESO.

The procedures performed by us is included in our Statement of Work. There were no differences between the procedures set forth in this Report and those set forth in our Statement of Work.

Our work was performed under the direction of yourself and was based on inquiries of, and discussions with, you. We have not sought to confirm the accuracy of the data or the information and explanations provided by management.

We did not provide a professional opinion on the application of accounting principles pursuant to Chartered Professional Accountants of Canada ("CPA Canada") or the AICPA's Standards for Reports on the Application of Accounting Principles (as amended and interpreted).

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The procedures that we performed were advisory in nature and do not constitute an audit or review in accordance with CPA Canada, PCAOB or AICPA auditing or attestation standards, nor do they constitute an examination of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants. Additionally, the procedures do not address the effectiveness of internal controls over financial reporting under National Instrument 52-109 issued by the Canadian Securities Administrators or Section 404 of the Sarbanes-Oxley Act. Accordingly, we express no opinion or any other form of assurance on the historical or prospective financial statements, management representations or other data of the Company included in or underlying the accompanying information. While we believe the information obtained is substantially responsive to your request, we are not in a position to assess its sufficiency for your purposes. In addition, we have no responsibility to update the Report for events or circumstances occurring after the date of the Report.

Our work has been limited in scope and time, and more detailed procedures may reveal issues that this engagement has not.

Restrictions on the use of our Report

This Report is intended solely for the information and use of the management of the IESO, and is not intended to be and should not be used by anyone other than these specified parties. EY therefore assumes no responsibility to any user of the Report other than IESO. Any other persons who choose to rely on our Report do so entirely at their own risk.

We appreciate the cooperation and assistance provided to us during the course of our work. If you have any questions, please call Nadira Singh at (416) 943-3896 or me at (416) 943-2094.

Sincerely,

[Signature will be inserted when report is final]

Shannon O'Mahony, CPA, CA
Partner

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IESO – Accounting for Conservation Costs

i. Background

The Independent Electricity System Operator ("IESO") is in the process of evaluating the accounting implications of a potential change to the recovery method of conservation costs.

The IESO is a non-profit entity, owned by the government of Ontario, and is governed by the Ministry of Energy ("Minister") and operates pursuant to a license granted by the Ontario Energy Board ("OEB"). As part of the IESO's operations, it is required to submit its proposed expenditures, revenue requirements and fees for the coming year to the OEB for review and approval. The submission may be made only with the approval of the IESO business plan by the Ministry of Energy.

As part of the IESO's operations, it facilitates conservation and demand management ("CDM") initiatives in Ontario, whereby local distribution companies ("LDC") incur expenditures in accordance with the CDM guidelines prescribed by the IESO. The IESO then reimburses the LDCs on a dollar-for-dollar basis. Currently, the IESO is reimbursed through the global adjustment mechanism in the fiscal year in which the expenditure is incurred as outlined in Ontario regulation 429/04 Adjustments under the Act and as provided by the Minister per the directive dated March 31, 2014, *2015-2020 Conservation First Framework.* The IESO receives this reimbursement from the LDCs who collect the global adjustments directly from ratepayers. The calculation of the global adjustment is the difference between the Hourly Ontario Electricity Price ("HOEP") and:

- Ontario Power Generation's regulated nuclear and hydro generation;
- IESO (including former Ontario Power Authority) contracts with generators and suppliers of conservation;
- Contracted rates administered by the Ontario Electricity Financial Corporation paid to existing generators.

The Ministry of Energy has granted authority to the IESO to collect the CDM incentive costs as part of the global adjustment.

The Ministry of Energy is currently exploring a potential financing arrangement for CDM programs that would see the IESO borrow funds from the Ontario Financing Authority ("OFA") to fund eligible CDM costs. This loan would be recognized as a financial liability by IESO. The CDM costs would then be recovered through the global adjustment over an extended period of time. The accounting alternatives for the underlying CDM costs and the loan interest in accordance with Public Sector Accounting Standards is discussed herein.

ii. Accounting guidance

Presently, the IESO accounts for CDM costs as an asset at the time an invoice is received from the entity that has incurred the CDM expenditure eligible for reimbursement (e.g. DR Asset; CR Accounts Payable to the LDC). At the end of each month, the IESO takes the sum of the amounts requested for reimbursement and includes this sum in its submission in the calculation of the total global adjustment for the month. Once the global adjustment is calculated by the IESO, the amount is charged to customers by the LDCs (on the IESO's behalf) and the IESO receives the funds in the subsequent month.

To address the accounting considerations of the inclusion of the CDM costs in the global adjustment over an extended recovery period (that will be determined by the Minister), the IESO must consider the guidance prescribed by the CPA Public Sector Accounting Standards ("PSAS"). PSAS does not provide specific

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guidance to address the accounting for assets that will be recovered through rates from various customers over future years

In the absence of PSAS that specifically applies to a transaction, professional judgement is required to apply an appropriate accounting policy that is consistent with primary sources and financial statement concepts of PSAS. Other accounting pronouncements may be useful but are not required to be consulted as noted in paragraphs 18 to 22 of PS 1150 *Generally accepted accounting principles* which addresses other sources that may be referenced:

> *.19 Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*
>
> *.20 When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.*

Consequently, to evaluate the accounting considerations of the accounting for CDM costs being evaluated by the IESO, other sources of GAAP may be considered. The following sources of GAAP were reviewed to determine whether specific guidance was provided addressing the recognition of assets related to regulatory activities:

1) Accounting Standards for Private Enterprises (“ASPE”) as issued by the Canadian Accounting Standards Board (“AcSB”)/ CPA provides the following guidance:

   AcG 19 *Disclosures by entities subject to rate regulation* provides guidance related to the presentation of financial information related to entities with rate regulated activities *when a separate asset or liability has been recognized solely as a result of the effects of rate regulation (AcG 19* paragraph 7(c)).

2) The guidance issued by the US Governmental Accounting Standards Board (“US GASB”) addresses accounting for regulated operations in GASB S62—*Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA* Pronouncements. The GASB S62 standard provides clear guidance that regulatory assets may be recognized to the extent certain criteria are met.

3) US GAAP, as issued by the Financial Accounting Standards Board (“FASB”) does provide guidance to address such activities in ASC 980 *Regulated Operations,* addresses the recognition of regulatory assets.

4) IFRS as issued by the IASB no longer precludes the recognition of regulatory assets and liabilities a rate-regulated entity’s financial statements. Rather, the IASB issued a standard, IFRS 14 *Regulatory deferral accounts*, which provides the following relevant guidance:

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Paragraph 2(a) of IFRS 14 notes that the objective of the Standard was to:

> *limit changes to the accounting policies that were applied in accordance with previous generally accepted accounting principles (previous GAAP) for regulatory deferral account balances, which are primarily related to the presentation of these accounts;*

Additionally, paragraph 10 of IFRS 14 notes:

> *Paragraphs 11–12 of IAS 8 specify sources of requirements and guidance that management is required or permitted to consider in developing an accounting policy for an item, if no relevant Standard applies specifically to that item. This Standard exempts an entity from applying paragraph 11 of IAS 8 to its accounting policies for the recognition, measurement, impairment and derecognition of regulatory deferral account balances. Consequently, entities that recognise regulatory deferral account balances, either as separate items or as part of the carrying value of other assets and liabilities, in accordance with their previous GAAP, are permitted to continue to recognise those balances in accordance with this Standard through the exemption from paragraph 11 of IAS 8, subject to any presentation changes required by paragraphs 18–19 of this Standard.*

This IFRS was issued in response to North American entities potentially transitioning to IFRS, because there was a lack of guidance that permitted the continued separate accounting treatment for regulatory assets and liabilities recognized as a result of rate regulated activities. The guidance above, permits rate-regulated entities upon first-time adoption of IFRS to continue to recognize regulatory assets and liabilities in accordance with the framework that was applied previously (i.e. generally, entities recognized assets in accordance with the guidance of ASC 980 (US entities) or AcG 19 (Canadian entities)).

Given the above-noted guidance, an entity can look to the other accounting frameworks while also ensuring that when judgment is applied, the resulting accounting policy is not inconsistent with the accounting guidance of PSAS. For this reason, the evaluation of accounting considerations in the development of the proposed accounting treatment for the recovery of CDM costs, is considered in the following order:

1) Can an asset be recognized in accordance with PS 1000 *Financial statement concepts* as prescribed by PSAS?

2) Can the IESO reference the guidance of other accounting frameworks to support the recognition of the reimbursement of CDM costs as an asset?

3) Failing the above, is the most appropriate accounting treatment to recognize the reimbursement of CDM costs as an expense of the current period and simply recognize revenue in future periods when the cost is recovered?

1. Qualification of reimbursement of CDM costs as an asset in accordance with PSAS:

Although PSAS does not specifically address the recognition of costs incurred that will be recovered through regulatory operations in future periods, this does not result in the conclusion that such costs cannot be recognized as an asset. In particular, paragraph 5 of PS 1150 notes:

> *.05 When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or*

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additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

In this case, the IESO would consider whether an asset could be supported by the guidance noted in PS 1000 *Financial statement concepts*, as follows:

Recognition of an asset

Paragraphs 35-37:

.35 Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

.36 Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) the public sector entity can control the economic resource and access to the future economic benefits; and

c) the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

In evaluating the costs incurred by the IESO to reimburse the LDCs, an argument could be made to support the recognition of the costs as an asset as the costs meet the three essential characteristics prescribed by PS 1000. Particularly:

- ***Future economic benefits*** – the CDM costs incurred by the IESO are made to reimburse eligible expenditures from market participants or third-party delivery agents (e.g. an LDC). The IESO can expect to generate future economic benefits from the reimbursement of these expenditures because: a) it has a license with the OEB to operate as a system operator and recover reasonable costs incurred (as noted below) and b) it is mandated by the Minister to charge ratepayers the global adjustment, which results in future cash inflows to recover the reimbursed costs.

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Paragraph 13 of PS 3210 *Assets* notes:

.13 *The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.*

The global adjustment that is charged to ratepayers and calculated by the IESO is not subject to the review or approval of the Ontario Electricity Board ("OEB"). Accordingly, there is limited risk with respect to the IESO's ability to recover the reimbursement costs incurred – even if the costs are recovered over an extended period of time, as the OEB does not have the ability to reject the recovery of these costs. While risk is limited, the recovery of the CDM expenditures reimbursed by the IESO is dependent on future transactions with electricity customers.

Also, while not specifically governed by the OEB, the IESO's license with the OEB provides that reasonable costs of its activities will be recovered:

> 13 *Fees and Charges*
>
> 13.1 *The Licensee may impose fees and charges to recover the cost of its activities in accordance with an order of the Board, or as permitted by law.*
>
> 14 *Books of Accounts and Financial Reporting*
>
> 14.3 *Unless otherwise provided by law, the Licensee shall, no less than 60 days before the beginning of the Licensee's fiscal year submit the Licensee's proposed expenditure and revenue requirements for the following fiscal year and the fees it proposes to charge during that year to the Board for review and approval. The Licensee's submission shall include a copy of the Licensee's annual business plan for the fiscal year as approved by the Minister under section 24 of the Electricity Act.*

Through its mandate from the Ministry of Energy, which provides the IESO with the right to recover costs, in combination with the IESO's license with the OEB, to the extent that CDM costs are incurred (past transaction) in accordance with the IESO's mandate from the Ministry of Energy, these cash inflows (and thus, future economic benefits) are expected to be recovered.

- ***Public sector entity control's economic resource and access to economic benefits*** – The IESO controls access to the future cash inflows that are generated from the incurrence of the CDM expenditures, as it is the IESO who has the mandate from the Ministry of Energy to incur these CDM costs and it is also the IESO who has the directive from this Minister to recover the CDM costs through the global adjustment mechanism charged to rate payers. Specifically, the Electricity Act 1998 notes the following:

> ***Electricity pricing to reflect costs***
>
> ***IESO to make adjustments***
>
> *25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,*
>
> *a. amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and*

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b. *amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (1).*

Paragraph 16 of PS 3210 provides additional guidance regarding control of an economic resource and access to future economic benefits, which notes that the public entity:

a) *Can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*

b) *Can deny or regulate access to those benefits by others; and*

c) *Is exposed to the risks associated with the economic resource.*

As outlined previously, the IESO has control over the economic resource, as it is the sole entity that is entitled to the cash inflows from ratepayers[1]. Furthermore, while risk is limited, the IESO is exposed to the risk associated with the economic resource – as the Ministry of Energy could change their directive or calculation of the global adjustment, or there could be a change in the economic environment (as discussed above) and thus, alter the ability of the IESO to recover the costs.

- ***Transaction or event giving rise to public sector entity's control has already occurred*** – When evaluating whether a transaction or event gives rise to control, paragraphs 26 and 27 of PS 3210 provides helpful guidance:

  The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.

  Meeting the eligibility criteria under an authorized transfer often determines the past transaction or event giving rise to control of an economic resource in non-exchange contracts or agreements. Shared cost agreements (reimbursement arrangements) are an example where the control of an economic resource arises when the recipient incurs eligible expenditures.

  Consistent with the guidance in paragraph 26, control over the economic benefits of the IESO's reimbursement via the global adjustment mechanism from the LDC occurs once the IESO has distributed funds to the LDC. At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover through the global adjustment as prescribed by the Ministry of Energy and the Electricity Act 1998.

Based on the characteristics, as prescribed by PS 1000 and the additional guidance of PS 3210, the cash outflows disbursed by the IESO to reimburse CDM costs to LDCs could meet the definition of an asset in PS 1000.

In accordance with the principles of PSAS, there are generally two types of assets that the IESO may consider recognizing 1) financial asset; or 2) non-financial asset. To classify the asset, it must fall into one of the two categories.

[1] Although the administrative framework provides that LDCs invoice the global adjustment to ratepayers on the IESO's behalf, the IESO has sole entitlement to the cash inflows that result from the global adjustment. All global adjustment amounts collected by LDCs are required to be submitted to the IESO.

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Financial asset

.39 ***Financial assets*** *are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.*

.40 *A financial asset is any asset that is:*

a) *cash;*

b) *a realizable asset that is convertible to cash;*

c) *a contractual right to receive cash or another financial asset from another party;*

d) *a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*

e) *an equity instrument of another entity;*

f) *an investment in a government business enterprise or government business partnership;*

g) *a financial claim on an outside organization or individual; or*

h) *an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

Based on the guidance of PS 1000, paragraphs 39 and 40, it may be difficult to substantiate the IESO's reimbursement of costs is a financial asset. The costs incurred by the IESO creates a right to recover costs as mandated by the Ministry of Energy. However, there is no contract with a specific ratepayer who ultimately reimburses the IESO for the costs incurred if the IESO calculates the global adjustment (i.e. its recovery mechanism) and this amount is then disbursed to all ratepayers in Ontario (regardless of whether an individual ratepayer benefited from the cost incurred). Furthermore, to the extent that a current ratepayer moves outside of Ontario, it could in fact result in a new ratepayer having to incur the additional charge to permit the IESO to recover its costs. It is difficult to argue that there is a contractual right to receive cash from another party, because legislation and the regulatory framework result in the right to future cash inflows from a pool of ratepayers.

An alternative view may be that the LDCs represent the counterparty to the IESO whereby the LDC is responsible for paying the IESO the global adjustment whether or not payment is ultimately received from the ratepayer. In this circumstance, the IESO can argue that a financial asset should be recognized for its contractual right to receive cash is from each specific LDC. An assessment of who is obligated for the global adjustment (e.g. an assessment of whether the LDC is the agent facilitating cash collection or is the entity obligated to pay the amount) would need to support this alternative.

Non-Financial asset

.41 *Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.*

.42 *Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:*

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(a) are normally employed to deliver government services;

(b) may be consumed in the normal course of operations; and

(c) are not for sale in the normal course of operations.

Another accounting treatment could be a 'non-financial asset' in accordance with paragraphs 41 and 42 of PS 1000. This accounting treatment may be supportable under the PSAS guidance as an 'other asset'. The reimbursement of CDM costs, results in the incurrence of an upfront cost in which the entity will benefit from economic benefits over a period of time.

Subsequent measurement of a non-financial asset

To the extent that the recognition of an asset is supported under the framework discussed above, the entity would then be required to draw the asset down over the recovery period (i.e. as cash is collected from ratepayers through the global adjustment mechanism). The presentation of the 'draw' down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue rather than to directly reduce the asset then the IESO might consider recognizing the draw-down of the asset as a reduction in revenues. Nonetheless, depending on the IESO's view of its role (i.e. principal versus agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. over the recovery period). At this time, the IESO has not completed a principal versus agency assessment.

Demonstrating that the CDM costs will meet the definition of a financial or non-financial asset is challenging and the IESO may not be able to support either view and should consider if referencing another accounting framework to inform an accounting policy for these costs may be required as discussed below.

2. Reference to other accounting frameworks:

As previously noted above, other accounting frameworks as issued by the AcSB, GASB, FASB and IASB provide accounting guidance related to the recognition of expenditures as an asset due to rate regulated operations. When referencing the other frameworks, it is important that the costs qualify as an asset under the framework set forth by PSAS to ensure that the principles of PSAS are not violated, and only then can reference to other frameworks be made to record the reimbursement of costs as an asset.

As the IASB and AcSB do not provide detailed guidance, the IESO could explore whether the costs incurred meet the specific criteria established by GASB S62 as note below; however consideration will need to be given to the consistent application of an accounting policy to all similar existing rate regulated assets and whether an established accounting policy is already in place that would require criteria to be met to change this policy:

476. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the following criteria:

a. The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

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b. The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

c. In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

To the extent that the criteria of paragraph 476 of GASB S62 are met, paragraph 480 then provides the following guidance:

480. Rate actions of a regulator can provide a business-type activity with reasonable assurance of the existence of an asset. A regulated business-type activity should capitalize all or part of an incurred cost that otherwise would be charged to expense if both of the following criteria are met:

a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

By referencing the guidance of GASB S62, the IESO must first establish that it meets the criteria of paragraph 476. In doing so, the IESO should consider:

a. Established rates for regulated services (GASB S62.474 (a)) - The IESO's business activity rates are regulated services subject to approval. In this particular instance, the IESO's CDM expenditures are governed by legislation, Electricity Act 1998 as noted above, and by its own governing board, being, the Ministry of Energy. The Ministry of Energy has established the calculation of the global adjustment mechanism[2], which in turn, is charged to the ultimate customer who consumes the energy.

b. Regulated rates are designed to recover specific costs (GASB S62.474 (b)) - One element of the global adjustment mechanism is designed to recover the CDM expenditures that the IESO reimburses to the respective LDCs. As the IESO's regulated business activities support the LDCs delivery of energy to customers, these costs form an integral part of the IESO's regulated services to support the transmission and distribution of energy in Ontario.

c. Demand for regulated activities results in reasonable assumption that established rates will be collected and will recover cost of activities (GASB S62.474(c)) - Given that the structure of the IESO is a not-for-profit entity governed by the Electricity Act of 1998 and regulated by the Ontario Energy Board to support the transmission and distribution of energy to customers in Ontario, rates approved to be charged to customers are designed to recover the IESO's costs. Since the reimbursement of CDM expenditures is a program initiated and mandated by the Ministry of Energy, an entity that also controls the Ontario Energy Board, the IESO would need to examine and support whether the CDM expenditures will be recovered through cash inflows from customers through the global adjustment mechanism. For example, the historic demand and dependency and projected demand for electricity could be used to support a judgment or assertion by the IESO that there is no significant risk that future demand levels decline and diminish to the extent that IESO would not be able to recover the reimbursement of CDM expenditures through rates (i.e. global adjustment mechanism).

[2] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

If the IESO can demonstrate that CDM expenditures meet the criteria as noted above, the fact pattern may support recognition of a regulatory asset in accordance with paragraph 480 of GASB S62. The IESO could consider:

a. Probability of future revenues (GASB S62.480 (a)) - The global adjustment mechanism explicitly includes recovery of the CDM expenditures. The directive from the Ministry of Energy could support the IESO's assertion that it is at least probable that future revenue will be generated in an amount at least equal to the capitalized cost related to the CDM expenditures. The IESO will need to assess if the global adjustment is considered future revenue (i.e. as part of the analysis of principal versus agent).

b. Recovery of previously incurred costs (GASB S62.480 (b)) - The IESO recovers the CDM expenditures through the global adjustment mechanism. The calculation of the portion of the global adjustment mechanism that relates to the CDM expenditures is determined by the amount that the IESO has approved to reimburse the LDC (e.g. the LDC requests reimbursement for costs it has *incurred* related to the CDM Requirement[3] and if all criteria are met, the IESO then approves the costs for reimbursement). For this reason, there is evidence that the future revenue earned from the global adjustment mechanism permits the recovery of previously incurred costs (i.e. not future costs).

Using the GASB S62 accounting guidance, and the related considerations noted above, the IESO may be able to reference GASB S62 to support the recognition of CDM expenditures as an asset by way of the GAAP hierarchy prescribed by PS 1150, paragraph 19, which explicitly references GASB as a secondary source of GAAP in the event that PSAS does not address a particular transaction. However, the IESO would also need to consider whether it is appropriate to refer to the GASB. First, consideration should be given to whether the GASB accounting guidance to capitalize rate regulated assets is consistent with the primary sources and financial statement concepts of PSAS. This may be challenging as it was noted in a paper prepared by the PSAB Conceptual Task Force *Consultation Paper 2: Measuring Financial Performance in Public Sector Financial Statements,* that the existing model in the PSA Handbook takes predominately an asset and liability view whereas standards set by the GASB is a financial statement presentation model based on a revenue and expense view. That said, the definition of an asset is similar under both the PSAS and GASB standards (GASB Concepts Statement 4[4]) and because rate regulated assets are not classified as deferred outflows of resources (GASB S65) but rather assets, it may be possible to use the GAAP hierarchy to refer to GASB to formulate an accounting policy. GASB S65 *Items Previously Recognized as Assets and Liabilities* was applicable for periods beginning after December 15, 2012. In paragraph 48 of GASB S65, rate regulated assets retained the definition of an asset and these assets were not required to be reclassified as a deferred outflow which is defined as the consumption of net assets by the government that is applicable to a future period. Secondly, any existing policy that the IESO currently applies to any other assets that could be considered rate regulated assets would require an evaluation of whether an accounting policy change from expensing to one that capitalizes rate regulated assets meets the criteria that the new accounting policy results in a more appropriate presentation of events or transactions in the IESO's financial statements (PS 2120, paragraph 2).

An alternative view is that it is inappropriate to reference GASB S62 because GASB has provided a special accommodation to permit the capitalization of rate regulated assets when they would otherwise be expensed. If an entity that applies PSAS, determines that the definition of an asset under PS 1000 is not met then for the IESO to use a special accommodation in another framework to avoid expensing the CDM costs would not be appropriate.

[3] The Ministry of Energy issued a CDM Directive as per its letter re: 2015-2020 Conservation First Framework, which instructed the Ontario Energy Board to amend the license of each licensed electricity distributor to add a condition that specifies the distributor would make CDM programs available to customers in its licensed area. The CDM programs are required to achieve reductions in electricity consumption. As part of this, the distributor is required to make province-wide CDM programs, funded by the OPA (now the IESO) available to all customers in its licensed service area.

[4] GASB Concepts Statement 4, paragraph 8, defines assets as '*resources with present service capacity that the government presently controls*.'

If the IESO does adopt an accounting policy to capitalize the CDM costs there are examples of entities that capitalize similar rate regulated assets that prepare their financial statements in accordance with GASB in the United States. For instance, the Long Island Power Authority ("LIPA") is an organization that is responsible for supplying electricity to customers within a specified service area. LIPA recognizes regulatory assets on its statement of net position in accordance with the guidance of GASB S62.

The FASB also includes accounting guidance related to the accounting for regulated activities in ASC 980-340-25-1 as follows:

> *Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*
>
> *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
>
> *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*
>
> *A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.*

The guidance provided by US GAAP notes that to the extent that a regulator provides reasonable assurance of the existence of an asset, then the entity should capitalize the incurred cost that would have otherwise been expensed. In this case, the Ministry of Energy has provided that the IESO will be able to recover its costs through the global adjustment mechanism[5]. As a result, the IESO can support meeting criterion a) of 980-340-25-1 that it is probable that future revenue will equal the cost capitalized as the IESO will include those reimbursed CDM costs in its calculation of the global adjustment charged to rate payers. Furthermore, the IESO can support criterion b) is met, because the future recovery relates only to those costs paid by the IESO to reimburse eligible CDM costs.

To further support this accounting position, there are system operators (i.e. similar to the IESO) in the United States who recognize regulatory assets. As an example, ISO New England Inc., a not-for-profit organization that regulates the flow of transactions in accordance with the Federal Energy Regulatory Commission ("FERC") recognizes regulatory assets for those costs incurred subject to rate recovery mechanisms. The ISO New England Inc. operates in a very similar manner to the IESO, in that both organizations are government regulated, system operators who manage the flow of electricity transactions and are not-for-profit. While ISO New England Inc. prepares its financial statements in accordance with US GAAP, rather than GASB, ISO New England Inc.'s treatment of regulatory items is indicative that the capitalization of expenditures related to regulated activities is not an unreasonable treatment for entities of this nature.

As the application of the hierarchy is a choice and not a requirement, another entity with the same fact pattern could account for the recovery of CDM expenditures differently.

Subsequent measurement of asset

To the extent that the recognition of an asset is supported under one of the frameworks discussed above, the entity would then draw the asset down over the recovery period (i.e. as cash is collected from ratepayers

[5] Section 1.7 of the directive from the Ministry of Energy dated March 31, 2014 titled *2015-2020 Conservation First Framework* provides that the Ontario Power Authority (now merged into the IESO) may "*recover payments made under the Province-Wide Distributor CDM Programs and Local Distributor CDM Programs from the Global Adjustment Mechanism up to the budget established…"*

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through the global adjustment mechanism). The presentation of the draw down of the asset is dependent upon the IESO's accounting for the global adjustment. To the extent that funds received from the global adjustment are recognized in revenue then the IESO might consider recognizing the recovery of the asset as a reduction in revenues (contra revenue account). Nonetheless, depending on the IESO's view of its role (i.e. principal vs. agent) or its view of the nature of costs incurred, an alternative accounting treatment may result. For instance, if the IESO is an agent, then it may reduce the asset balance directly for those amounts collected by way of the global adjustment – rather than recording two separate entries for the recognition of revenue (i.e. global adjustment) and reduction of revenue (i.e. recovery of asset).

3. Expensing expenditures as incurred

Failing the ability to support that an asset can be recognized from alternatives (1) and (2) above, the IESO would be required to record the reimbursement of an LDC's eligible CDM expenditures as an expense in the period incurred.

Paragraphs 49 to 51 of PS 1000 provide the following guidance related to expenses:

.49 Expenses, including losses, are decreases in economic resources, either by way of decreases in assets or increases in liabilities, resulting from the operations, transactions and events of the accounting period.

.50 Expenses include the cost of economic resources consumed in and identifiable with the operations of the accounting period. For example, the cost of tangible capital assets is amortized to expenses as the assets are used in delivering government programs (see TANGIBLE CAPITAL ASSETS, Section PS 3150). Expenses do not include debt repayments or transfers to other governmental units in the government reporting entity.

.51 Losses can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.

By referencing paragraphs 49 to 51, it can be noted that the reimbursement of an LDC's CDM expenditures do indeed result in an immediate decrease in the IESO's economic resources – as noted in paragraph 49. If it cannot be substantiated that an asset can be recorded due to the future economic benefits expected to be received through the global adjustment – these expenditures must be recorded as an expense.

4. Accounting for interest costs

The accounting for interest costs related to the loan being considered to finance the IESO's recovery of CDM costs incurred over an extended period of time would be dependent on how the Ministry of Energy proposes that the IESO will recover these costs. To the extent that the Minister revises the calculation of the global adjustment, then the IESO may be able to recognize an asset for these costs (i.e. see the arguments listed in sections (1) and (2) above).

If the Ministry of Energy proposes that the IESO recover the interest costs through the revenue requirement, the IESO will need to evaluate its ability to recover the interest costs through future rates. To the extent that the there is significant risk associated with recovering these costs, interest costs should be recognized as an expense in the current period. Otherwise, the IESO may be able to capitalize the interest costs as an asset by applying the arguments in sections (1) and (2) noted above.

If a recovery mechanism is not established for the interest costs related to the loan, the interest costs would be recognized as an expense of the current period.

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Unknown.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject:
Date: Monday, March 20, 2017 09:57:17

.20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization

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UPDATED - Fair Hydro -- Change of Law Agreements.rtf

From: bwood@torys.com [bwood@torys.com]
To: Ramchandani, Rima [rramchandani@torys.com]; LEE John -TREASURY []; RYFA Ken -TREASURY []; 'HAHN PARKER Janet -TREASURY' []; MAUTI John -FIN & C CTRL []; LAURETA LAPIRA May -TREASURY []; Mansoori, Nina []; Feldman, Michael []; WONG Leslie -LAWDIV []; 'Sebastiano, Rocco' []; Milligan, Peter []; Fullerton, Rick []; Mayman, Gadi (OFA) []; Manning, Mike (OFA) []; Hanslep, Malle (MOF) []; 'ASHBOURNE, STEPHEN' []; 'ian.benaiah@rbccm.com' []; 'Khan, Nur (nur.khan@rbccm.com)' []; 'brent.r.taylor@rbccm.com' []; 'katrina.niehaus@gs.com' []; 'brian.delaney@gs.com' []; Maciel, Andrew []; Adalja, Sunil []; Persad, Nicole []; Persaud, Donnie - Debt Capital Markets []; Kandeepan, Ken (OFA) []; LADAK Lubna -TREASURY []; Strathy, Anna (OFA) []; Veinot, Cindy (TBS) []; McKinlay, Tom (MAG) []; Donaldson, Mark (TBS) []
Subject: UPDATED - Fair Hydro -- Change of Law Agreements
Date: Tuesday, November 21, 2017 11:38:34

For those unable to participate in person, here's the dial-in:

Dial-in: 1-800-600-0998
Access Code: 8657666#

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Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: PRESTAGE, JA (JA.PRESTAGE@blakes.com) [JA.PRESTAGE@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: Updated Control Assessment (Mar 21)
Date: Tuesday, March 21, 2017 23:08:10
Attachment 1: Control Assessment_Affordability Fund Rev Mar 21 np.doc

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Stephen/Jon/Michel,

Please find attached an updated version of the control analysis for your reference.

Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.

Thanks.

Nadine

Control Assessment_Affordability Fund Rev Mar 21 np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

REVISED Control Assessment of Affordability Fund Trust (Rev. Mar 21, 2017 11 pm) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of additional edits to docs.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills.

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

Commented [NP1]: H1 precluded?

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In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and **give regard to** guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

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There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Draft Trust Declaration (March 20 5:30 pm), including related schedules
2. Draft Transfer Payment Agreement (March 20 5:30 pm)
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	The Trust Declaration and TPA are not intended to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. This intention is clearly communicated in the TPA:	

Commented [NP2]: Blakes and MOE to consider additional edits to specified text in the agreements (to ensure consistency with messaging regarding potential changes to docs and discretion of the Trustees).

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose. Under the TPA, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2 which • the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. (see 20.2) • The TPA states in section 20.2 that The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed. **Changes to Trust Declaration:** Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration with an expectation that such changes should not [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] Section 6.1(e) permits the Trustee to add to or reasonably clarify MODIFY the principles set forth in the Principles Annex. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles.	✓

Commented [NP3]: Blakes to consider further edits (suggests principles are not discretationary and non-compulsory)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Section 2.3 of the Principles Annex of the Trust Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)". Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). The TPA does not direct a specific governance structure, but rather includes the following reference under 2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0 Section 5.8 of the Trust Declaration provides further discusses expectations w.r.t. rules and procedures of the Board of Trustees which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. . There will be no assets at the end of the Trust's existence to return back to the Province, and the termination of the Trust will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to terminate unilateral. **SECTION 7 – TERMINATION (Declaration of Trust)** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT (TPA)** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.2Extension.** The term of the Agreement may be extended by further agreement between the Parties. **3.3Extension of the Declaration of Trust.** Where the parties agree upon an extension under 3.2, the Trustee pursuant to the Declaration of Trust, is expected to undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members (appointment of original trustee is accompanied by ;a process for identification of replacement board which will perform active trustee duties.) No intention or ability to control original trustee)	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS offers the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the	Initial Trustee ✓ Replace-ment Board X

Commented [NP4]: Suggested these alternative edits to BLAKES otherwise reflects controlling language

Commented [NP5]: But no control – see PSAS guidance quoted

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	organization	
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Computershare, as settlor and Computershare as trustee established the trust. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 ***(c) Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(d)Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitality directive only state expectation that Trust's processes would align with the principles.)	***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** See commentary on control criteria #3 above for lack of control of Province. ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs (non-controlled by the province). Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. However, it should be noted that these sections are descriptions of matters that would typically be expected an Administrative Services Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement). **5.0RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **PRINCIPLES ANNEX** The Trustee shall have regard to [but shall not be specifically bound by,] the principles listed in applying its discretion in relation to the administration of the Trust. 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Appendix II (continued)

Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: PRESTAGE, JA (JA.PRESTAGE@blakes.com) [JA.PRESTAGE@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: Updated Control Assessment (Mar 21)
Date: Tuesday, March 21, 2017 23:08:10
Attachment 1: Control Assessment_Affordability Fund Rev Mar 21 np.doc

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Stephen/Jon/Michel,

Please find attached an updated version of the control analysis for your reference.

Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.

Thanks.

Nadine

Control Assessment_Affordability Fund Rev Mar 21 np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

REVISED Control Assessment of Affordability Fund Trust (Rev. Mar 21, 2017 11 pm) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of additional edits to docs.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills.

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

Commented [NP1]: H1 precluded?

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In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and **give regard to** guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

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There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Draft Trust Declaration (March 20 5:30 pm), including related schedules
2. Draft Transfer Payment Agreement (March 20 5:30 pm)
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	The Trust Declaration and TPA are not intended to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. This intention is clearly communicated in the TPA:	

Commented [NP2]: Blakes and MOE to consider additional edits to specified text in the agreements (to ensure consistency with messaging regarding potential changes to docs and discretion of the Trustees).

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose. Under the TPA, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2 which • the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. (see 20.2) • The TPA states in section 20.2 that The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed. **Changes to Trust Declaration:** Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration with an expectation that such changes should not [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] Section 6.1(e) permits the Trustee to add to or reasonably clarify MODIFY the principles set forth in the Principles Annex. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles.	✓

Commented [NP3]: Blakes to consider further edits (suggests principles are not discretationary and non-compulsory)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Section 2.3 of the Principles Annex of the Trust Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)". Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). The TPA does not direct a specific governance structure, but rather includes the following reference under 2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0 Section 5.8 of the Trust Declaration provides further discusses expectations w.r.t. rules and procedures of the Board of Trustees which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. . There will be no assets at the end of the Trust's existence to return back to the Province, and the termination of the Trust will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to terminate unilateral. **SECTION 7 – TERMINATION (Declaration of Trust)** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT (TPA)** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.2Extension.** The term of the Agreement may be extended by further agreement between the Parties. **3.3Extension of the Declaration of Trust.** Where the parties agree upon an extension under 3.2, the Trustee pursuant to the Declaration of Trust, is expected to undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members (appointment of original trustee is accompanied by ;a process for identification of replacement board which will perform active trustee duties.) No intention or ability to control original trustee)	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS offers the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the	Initial Trustee ✓ Replace-ment Board X

Commented [NP4]: Suggested these alternative edits to BLAKES otherwise reflects controlling language

Commented [NP5]: But no control – see PSAS guidance quoted

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	organization	
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Computershare, as settlor and Computershare as trustee established the trust. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 ***(c) Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(d)Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitality directive only state expectation that Trust's processes would align with the principles.)	***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** See commentary on control criteria #3 above for lack of control of Province. ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs (non-controlled by the province). Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. However, it should be noted that these sections are descriptions of matters that would typically be expected an Administrative Services Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement). **5.0RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **PRINCIPLES ANNEX** The Trustee shall have regard to [but shall not be specifically bound by,] the principles listed in applying its discretion in relation to the administration of the Trust. 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Appendix II (continued)

Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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Updated Control Assessment (Mar 21).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; VINER, JON (JON.VINER@blakes.com) [JON.VINER@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: PRESTAGE, JA (JA.PRESTAGE@blakes.com) [JA.PRESTAGE@blakes.com]; Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]; samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: Updated Control Assessment (Mar 21)
Date: Tuesday, March 21, 2017 23:08:10
Attachment 1: Control Assessment_Affordability Fund Rev Mar 21 np.doc

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Stephen/Jon/Michel,

Please find attached an updated version of the control analysis for your reference.

Following tomorrow's edits to address remaining language that might suggest that the government has a 'veto' right, we should be in a position to complete the analysis.

Thanks.

Nadine

Control Assessment_Affordability Fund Rev Mar 21 np.pdf

BLAKES COMMENTS ADDED IN COMMENT BUBBLES (3/21/2017)

REVISED Control Assessment of Affordability Fund Trust (Rev. Mar 21, 2017 11 pm) for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of additional edits to docs.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a recently formed, limited purpose Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) [and who have difficulty paying their electricity bills.

The Affordability Fund would be available for distributions to beneficiaries, to be identified based on recommendations from LDCs based on factors listed in the Declaration of Trust [and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy plans to enter in a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will shortly thereafter be replaced by an independent Board of Trustees, to be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into TPA with Computershare and flowing the approved funding prior to March 31st.

The Board of Trustees is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

Commented [NP1]: H1 precluded?

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In accordance with the Trust Declaration, The Trust will engage with Hydro One as an initial Administrative Services Agent/Implementation Agent and will have the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and **give regard to** guiding principles set out in the Declaration of Trust (and agreed by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's right under the TPA to consent, not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles, which the Trustee is required to consider in the exercise of its discretion,** will be set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that are expected to be included in the administrative services agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is subject to the Trustee's overall discretion. As noted, the Trustees are not bound to use the guidance.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

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There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Draft Trust Declaration (March 20 5:30 pm), including related schedules
2. Draft Transfer Payment Agreement (March 20 5:30 pm)
3. OPCD Trust Guidance
4. OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	The Trust Declaration and TPA are not intended to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. This intention is clearly communicated in the TPA:	

Commented [NP2]: Blakes and MOE to consider additional edits to specified text in the agreements (to ensure consistency with messaging regarding potential changes to docs and discretion of the Trustees).

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	Schedule A, Section 1.1 (Interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose. Under the TPA, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2 which • the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. (see 20.2) • The TPA states in section 20.2 that The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed. **Changes to Trust Declaration:** Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration with an expectation that such changes should not [provided that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] Section 6.1(e) permits the Trustee to add to or reasonably clarify MODIFY the principles set forth in the Principles Annex. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles.	✓

Commented [NP3]: Blakes to consider further edits (suggests principles are not discretationary and non-compulsory)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Section 2.3 of the Principles Annex of the Trust Declaration describes the measures specified in Schedule A as measures that "may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex)". Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Administrative Services Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). The TPA does not direct a specific governance structure, but rather includes the following reference under 2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0 Section 5.8 of the Trust Declaration provides further discusses expectations w.r.t. rules and procedures of the Board of Trustees which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. . There will be no assets at the end of the Trust's existence to return back to the Province, and the termination of the Trust will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to terminate unilateral. **SECTION 7 – TERMINATION (Declaration of Trust)** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT (TPA)** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.2Extension.** The term of the Agreement may be extended by further agreement between the Parties. **3.3Extension of the Declaration of Trust.** Where the parties agree upon an extension under 3.2, the Trustee pursuant to the Declaration of Trust, is expected to undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members (appointment of original trustee is accompanied by ;a process for identification of replacement board which will perform active trustee duties.) No intention or ability to control original trustee)	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS offers the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the	Initial Trustee ✓ Replace-ment Board X

Commented [NP4]: Suggested these alternative edits to BLAKES otherwise reflects controlling language

Commented [NP5]: But no control – see PSAS guidance quoted

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	organization	
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Computershare, as settlor and Computershare as trustee established the trust. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 ***(c) Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(d)Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however, expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	X
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitality directive only state expectation that Trust's processes would align with the principles.)	***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** See commentary on control criteria #3 above for lack of control of Province. ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to: (a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs (non-controlled by the province). Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. However, it should be noted that these sections are descriptions of matters that would typically be expected an Administrative Services Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreement). **5.0RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **PRINCIPLES ANNEX** The Trustee shall have regard to [but shall not be specifically bound by,] the principles listed in applying its discretion in relation to the administration of the Trust. 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Appendix II (continued)

Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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Updated Control Assessment (for your review and feedback).rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]; Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: samir chhelavda (Samir.Chhelavda@HydroOne.com) [Samir.Chhelavda@HydroOne.com]
Subject: Updated Control Assessment (for your review and feedback)
Date: Monday, March 20, 2017 22:32:54
Attachment 1: TOR_2024-#12888010-v11-Transfer_Payment_Agreement_(Affordability_Fund_Tr....docx
Attachment 2: TOR_2024-#12887993-v17-Affordability_Fund_Trust_–_Declaration_of_Trust_-....docx
Attachment 3: Control Assessment_Affordability Fund Mar 20 np.doc

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Stephen/Michel,

Attached is an updated DRAFT control analysis reflecting current information based on the updated draft TPA and Declaration (5:30 pm version) attached.

Your review of the analysis in Appendix 1 would be valuable as follows:

Stephen – please advise of any factual inaccuracies in the extracts listed

Michel – please advise of any additional elements that should be reflected, comments inserted and conclusions for each of the control criteria w.r.t. control (yes or no).

MOE is expecting the updated control analysis as soon as possible. Your feedback by tomorrow at noon would be most appreciated, if possible.

Thanks in advance.

Nadine

DECLARATION OF TRUST

Made as of March •, 2017

by

COMPUTERSHARE TRUST COMPANY OF CANADA

establishing

AFFORDABILITY FUND TRUST

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DECLARATION OF TRUST

This Declaration of Trust is made as of March •, 2017, by Computershare Trust Company of Canada, a trust company established under the laws of Canada and licensed to carry on business as a trust company in each of the provinces and territories of Canada (together with its successors and assigns and the other trustees (including the Board of Trustees) contemplated herein, the "**Trustee**").

WHEREAS Computershare Trust Company of Canada, as settlor, wishes to establish a trust to acquire, hold, manage, invest, apply and dispose of certain property for the benefit of certain Beneficiaries as herein described.

NOW THEREFORE Computershare Trust Company of Canada hereby declares that it holds in trust as trustee (a) the sum of ONE HUNDRED DOLLARS ($100) contributed by it on this date and (b) all other property of every type and description which it may hereafter acquire or hold in its capacity as trustee of the Trust and all income therefrom and proceeds thereof, to hold, manage, invest, apply and dispose of same on and subject to the provisions set forth in this Declaration of Trust, including the annexes and schedule attached hereto.

SECTION 1
INTERPRETATION

1.1 Definitions

In this Declaration:

(a) "***Administrative Services Agent***" means each agent, which may include any Electricity Distributor or other Person, appointed from time to time under an Administrative Services Agreement, and its successors and permitted assigns solely in such capacity.

(b) "***Administrative Services Agreement***" means each agreement entered into from time to time by the Trust and one or more Administrative Services Agents or other Persons, in furtherance of the Purpose, under which the Administrative Services Agent would agree to provide specified administrative and other services to and on behalf of the Trustee (including, following the Original Trustee Replacement Date, the Permitted Delegations Annex), as such agreement may be amended, supplemented, restated, renewed or replaced from time to time.

(c) "***Assets***" means, collectively, the following:

(i) the $100 Canadian referred to above, contributed by Computershare Trust Company of Canada on the date hereof;

(ii) all other property which is now or which at any time in the future may be issued, assigned, transferred, provided, donated, gifted and contributed to the Trustee (including pursuant to the Transfer Payment Agreement) to be held in trust pursuant to this Declaration (and which the Trustee is willing to accept and hold);

(iii) all acquisitions of property made by the Trust;

(iv) all property which may at any time be substituted for or in respect of the property referred to in clauses (i), (ii) and (iii), above;

(v) all income of the Trust, including investment income generated by the investment of the property referred to in clauses (i), (ii), (iii) and (iv), above; and

(vi) all proceeds of disposition of any of the property referred to in clauses (i) through (v) above,

but excludes any property paid out or distributed (whether out of income or capital) pursuant to the provisions of this Declaration.

(d) "***Beneficiary***" means each Primary Beneficiary and each Residual Beneficiary, as applicable.

(e) "***Board of Trustees***" means (i) as of the Original Trustee Replacement Date, the individual trustees appointed by the Original Trustee pursuant to Section 5.7 on the basis described in the Trustee Replacement Annex, and (ii) thereafter, the group of trustees appointed hereunder and acting in such capacity.

(f) "***Business Day***" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day [and any other day on which the Province has elected to be closed for business].

(g) "***Declaration***" means this Declaration of Trust, as it may be amended, restated, supplemented or otherwise modified from time to time, and includes each of the annexes and the Schedule attached hereto which constitute and form an integral part of this Declaration.

(h) "***Electricity Distributor***" means, in respect of a designated service area or region in Ontario, the distributor of electricity to residences located in such area or region.

(i) "***Electricity Invoice***" means an invoice issued by an Electricity Distributor in respect of electricity charges and related services and amounts incurred or assessed in respect of a residence located in the Electricity Distributor's designated service area or region in Ontario.

(j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada).

(k) "***Eligible Measures***" means electricity efficiency and/or conservation measures determined by the Trustee from time to time on the basis contemplated in the Principles Annex and in the manner specified in and having regard to the Permitted Delegations Annex.

(l) "***Final Distribution Date***" means the earlier of (i) the date (if any) on which the Trustee determines (by a resolution of the Board of Trustees) that no further distributions are likely to be made to any Primary Beneficiary and (ii) •, 20[23].

(m) "***HAP Eligible Person***" means an "Eligible Person" as defined in Section 3.1 of the document entitled "Conservation First Framework LDC Took Kit" published by the Independent Electricity System Operator and designated as Final v3.0 – March 11, 2016, as amended in accordance with the Energy Conservation Agreement between the Independent Electricity System Operator and Electricity Distributors.

(n) "***Minister of Energy***" means the Minister of Energy or such other member of the Executive Council as may be assigned primary ministerial responsibility for the administration of the *Ministry of Energy Act, 2011* under the *Executive Council Act*.

(o) "***Original Trustee***" means Computershare Trust Company of Canada, acting in its capacity as trustee hereunder, together with any additional or replacement Trustee appointed hereunder prior to the Original Trustee Replacement Date and any of their respective successors and assigns.

(p) "***Original Trustee Replacement Date***" has the meaning specified in Section 5.7, being the date on which the Original Trustee is replaced as trustee under this Declaration by the Board of Trustees as contemplated under Section 5.7.

(q) "***Permitted Delegations Annex***" means the Permitted Delegations Annex set forth as an annex to this Declaration.

(r) "***Person***" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

(s) "***Primary Beneficiary***" means each individual that, as of a time of determination, satisfies each of the following criteria:

(i) the individual owns, rents or leases a residence located in Ontario and is the primary or secondary electricity utility account holder named on an Electricity Invoice issued in respect of that residence; and

(ii) the individual is not a HAP Eligible Person.

(t) "***Principles Annex***" means the Principles Annex set forth as an annex to this Declaration.

(u) "***Province***" means the Province of Ontario.

(v) "***Program***" means the establishment, promotion, implementation and administration of a program to achieve the Purpose on the basis contemplated in this Declaration.

(w) "***Purpose***" means (i) the making of distributions to Primary Beneficiaries who are identified and whose needs are assessed in accordance with section 3.1 and 3.2 of this

Declaration, having regard to (x) the principles set forth in the Principles Annex, (y) the manner and basis of implementation and administration of the Program contemplated in the Permitted Delegations Annex, and (z) the other terms, limitations and requirements set forth in this Declaration, and (ii) to the extent that Assets are available following the distributions made to Primary Beneficiaries as contemplated in (i), above, the making of distributions to Residual Beneficiaries who are identified and whose needs are assessed in accordance with section 3.3 and otherwise having regard to the other terms, limitations and requirements set forth in this Declaration.

(x) ***"Residual Beneficiary"*** means each charitable organization identified by the Trustee and specified as a residual beneficiary hereunder from time to time, selected by the Trustee in consultation with and having regard to the recommendations of the Ontario Energy Board in accordance with section 3.3.

(y) "***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time.

(z) "***Trust***" means Affordability Fund Trust, a trust established under and governed by the laws of the Province of Ontario pursuant to this Declaration.

(aa) "***Trustee***" means (i) the Original Trustee and (ii) on and after the Original Trustee Replacement Date, the Board of Trustees acting together in accordance with and subject to Section 5.7 and in accordance with the rules and procedures adopted by the Board of Trustees pursuant to Section 5.8.

(bb) "***Trustee Replacement Annex***" means the Trustee Replacement Annex set forth as an annex to this Declaration.

1.2 Headings and Table of Contents

The insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Declaration.

1.3 References

Unless otherwise specified, all references to Sections are to Sections of this Declaration. The words "hereto", "herein", "hereof", "hereunder" and similar expressions refer to this Declaration and not to any particular Section or other provision of this Declaration.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Governing Law

This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and of Canada applicable therein.

1.6 Severability

Any provision of this Declaration which is illegal, invalid or unenforceable in any jurisdiction shall not affect the legality, validity or enforceability of the remaining provisions and any such illegality, invalidity or unenforceability in any jurisdiction shall not affect the legality, validity or enforceability of such provision in any other jurisdiction.

1.7 Reference to the Trust and the Trustee

For greater certainty, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Trust, and, where any reference is made in this Declaration to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee solely in its capacity as trustee of the Trust. Except as provided under the Transfer Payment Agreement, no Person dealing with the Trust or the Trustee shall be bound to make any enquiry concerning, or has the right to require production of, any evidence of the validity of any act of, or transaction purporting to be made by, the Trustee.

1.8 Defect in Appointment

No action taken by the Trustee will be invalid or ineffective by reason only of any defect in the appointment of the Trustee or the non-compliance by the Trustee with any rules or procedures adopted by the Trustee and which is discovered after the taking of such action.

SECTION 2
CONCERNING THE TRUST

2.1 Objectives

The Trust is established to hold, invest, apply and dispose of the Assets for the benefit of the Beneficiaries in furtherance of the Purpose, as provided for in this Declaration. In furtherance of the Purpose:

(a) the Original Trustee shall hold and invest the Assets as contemplated in this Declaration until the Original Trustee Replacement Date, after which the Board of Trustees shall be duly appointed hereunder; and

(b) the Board of Trustees shall hold, invest, apply and dispose of the Assets in accordance with this Declaration, including by determining the identities of and distributions (if any) to be made to or for the benefit of the Primary Beneficiaries in accordance with Sections 3.1 and 3.2 of this Declaration, having regard to the principles set forth in the Principles Annex and in the manner and on the basis contemplated in the Permitted Delegations

Annex, or otherwise by determining the identities of and distributions to be made to or for the benefit of any Residual Beneficiary in accordance with Section 3.3,

in each case and in all respects subject to the terms, limitation and requirements set forth in this Declaration.

2.2 Name of the Trust

The name of the Trust shall be the "Affordability Fund Trust" or such replacement name as the Trustee shall determine and specify from time to time. The Trustee shall hold the Assets and conduct the activities of the Trust under such name or variation thereof (including any variation of such name in the French language). If the Trustee determines to change the name of the Trust, the Trustee may specify and use such other designation or adopt such other name (including any name in the French language) as it considers appropriate and may hold the Assets and conduct the activities of the Trust under such designation or other name.

2.3 Location

The head office and the situs of the administration of the Trust shall be • or such other address in Ontario as the Trustee may determine from time to time.

2.4 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year.

SECTION 3
DISTRIBUTIONS

3.1 Distributions to Primary Beneficiaries

Prior to the Final Distribution Date, the Trustee shall undertake diligent efforts in good faith to distribute the Assets (including capital or income) to the Primary Beneficiaries identified based on the application of the principles specified in the Principles Annex and in the manner and in the amounts determined on the basis contemplated by the Permitted Delegations Annex, in each case in the amounts and to the extent specified herein and therein, subject in all respects to the exercise by the Trustee of its discretion hereunder and to the exclusion of the other Beneficiaries.

3.2 Amount of Distributions to Primary Beneficiaries

For the purposes of determining the amount of distributions to be made to the Primary Beneficiaries, the Trustee shall have regard to and be entitled to rely on the recommendations of and information provided by Electricity Distributors acting as Administrative Services Agents appointed for the purposes, in the manner and substantially on the terms contemplated in the Permitted Delegations Annex, without any duty or obligation to verify or makes enquiries regarding the basis for or propriety of such recommendations or the accuracy or completeness of such information, except if and to the extent that the Trustee, in its discretion, determines that (i) it has actual knowledge that such recommendations are contrary to the reasonable application of the principles set forth in the Principles Annex or have been made on a basis that is manifestly contrary to such principles or the delegations and activities specified or contemplated to be

undertaken under the Permitted Delegations Annex or (b) such information is known by the Trustee to be erroneous, contain a material misrepresentation or is materially incomplete.

3.3 Distributions to Residual Beneficiaries

Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.

SECTION 4
POWERS OF THE TRUSTEE

4.1 General

Subject to and in compliance with the terms, limitations and restrictions of this Declaration and notwithstanding applicable trust legislation, the Trustee shall have, without other or further authorization, full, exclusive and absolute power, control and authority over the Assets and over the affairs and activities of the Trust to the same extent as if the Trustee were not a trustee, but rather the sole and absolute owner of the Assets in its own right, including such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the affairs and activities of the Trust, with such powers of delegation as may be permitted or otherwise contemplated by this Declaration. Except as expressly provided in this Declaration, the enumeration in this Declaration of any specific power or authority shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority set out herein. Subject to the terms, limitations and restrictions of this Declaration, every discretion or power hereby conferred on the Trustee is an absolute and uncontrolled discretion or power.

4.2 Specifically Enumerated Powers

The Trustee shall have the following specific powers and authorities:

(a) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement.

(b) ***Contracts and Undertakings.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under any contract entered into or undertaking given by the Trustee in furtherance of the Purpose, including any Administrative Services Agreement and any License Agreement.

(c) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(d) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder.

(e) ***Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing.

(f) ***Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.*** The Trustee shall have the power to apply the Assets and the proceeds and income derived therefrom to make distributions to the Beneficiaries contemplated by Section 3, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with therewith.

(g) ***Power to Delegate and to Appoint Agents, etc.*** The Trustee shall have the power to appoint, employ or contract with any Person as the Trustee in its sole and absolute discretion may consider appropriate or advisable in connection with the activities of the Trust. Without limiting the generality of the foregoing:

(i) the Trustee will have the power at any time and from time to time to appoint, employ or retain consultants, financial advisers, technical advisers, legal counsel, accountants, administrative services agents, insurers, insurance agents and insurance brokers, as the Trustee may require for the purpose of discharging its duties hereunder and shall not be responsible for or for the actions of any of them, including to:

(A) act for and on behalf of the Trust in connection with any and all matters in any way relating to the negotiation, settlement, entering into, amending, performance and enforcement of the Transfer Payment Agreement, the Administrative Services Agreements, any License Agreement and any other agreements and contracts to which the Trust becomes a party in accordance with this Declaration;

(B) to provide or cause to be provided any or all kinds of administrative services in any way relating to the activities of the Trust;

(C) to act as attorney in fact, agent or trustee in the acquisition, holding, investment, application, sale or other disposition of the Assets and in the handling, prosecuting, defending or settling of any claims of or made against the Trust;

(D) to value the Assets and determine the net income of the Trust; and

(E) to make any filings, elections and submissions (including in respect of taxation matters) in connection with the Trust's compliance with applicable laws and regulatory requirements; and

(ii) the Trustee may pay remuneration and reimbursements from the Assets for services performed for it or on its behalf in the discharge of the trusts hereof without taxation for costs or fees of any counsel, solicitor or attorney.

Without limiting the foregoing, it is expected that the Board of Trustees will seek to enter into Administrative Services Agreements with Electricity Distributors for the purposes contemplated by the Permitted Delegations Annex, and on such terms and conditions (including terms and conditions as to the payment of reasonable fees and expenses) not inconsistent therewith as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(h) ***Power to Operate Accounts.*** The Trustee shall have the power to (i) open and operate accounts at any chartered bank, trust company or other financial institution in Canada or elsewhere, as the Trustee in its sole and absolute discretion may consider appropriate or advisable; (ii) deposit therein any moneys or securities forming part of the Assets whether or not such deposits will earn interest; (iii) withdraw such deposits at such times and in such manner as the Trustee may determine; (iv) draw, make, endorse, deposit or otherwise deal in cheques, bills of exchange, promissory notes, drafts and other kinds of instruments and securities; and (v) enter into contracts or agreements with any such chartered bank, trust company or other financial institution containing such terms and provisions as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. In connection therewith, the Trustee shall have no liability or responsibility for any loss which may occur by reason of the failure of any such chartered bank, trust company or other financial institution.

(i) ***Power to Collect, etc.*** The Trustee shall have the power to (i) collect, sue for, receive and give receipts for all sums of money or other property due to the Trust; (ii) consent to extensions of time for payment or to the renewal of any securities or obligations; (iii) engage or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise, any demands, claims, actions, suits or proceedings relating to the Trust or the Assets; (iv) exercise any and all remedies available to the Trustee under any agreement or as may otherwise be available, including any power of foreclosure or sale available at law; (v) in connection with any such foreclosure or sale, purchase or otherwise acquire title to any property and to convey good title thereto free of any and all trusts hereby established, or to take or retake possession of any property secured under any agreement or instrument; (vi) extend the time, with or without

security, for the payment or delivery of any debts or property; (vii) execute and deliver releases, acquittances, discharges, agreements or other instruments related thereto; and (viii) pay or satisfy any debts or claims upon any evidence that the Trustee, in its sole and absolute discretion, may determine to be sufficient.

(j) ***Power to Obtain Insurance***. The Trustee shall have the power to enter into contracts for or in relation to or otherwise obtain policies of insurance for the purpose of insuring the risks associated with the Trust, including to insure the Trustee (including the members of the Board of Trustees) against any risk of loss associated with assuming and performing the duties as Trustee. Without limiting the foregoing, it is expected that the Board of Trustees will obtain commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage.

(k) ***Power to Pay Trustee's Fees.*** The Original Trustee shall be entitled to be paid and receive the fees set forth in the Original Trustee's [schedule of fees delivered as of the date hereof] as compensation for its services under this Declaration, and to be reimbursed for its out-of-pocket expenses reasonably incurred, in each case from the Assets and without the approval of any Beneficiary or any court. The Original Trustee shall be entitled, in its sole and absolute discretion, to withdraw funds from time to time for such purpose from any account of the Trust. Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their respective duties and obligations under this Declaration, in each case without the approval of any Beneficiary or any court, provided that the members of the Board of Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" specified and amended by the Province from time to time, a copy of the current version of which is attached as Exhibit 1 to the Principles Annex.

(l) ***Power to Pay Taxes.*** The Trustee shall have the power to (i) pay, deduct, withhold or remit any taxes or assessments which are required by law to be paid, deducted, withheld or remitted together with or from any payment made by the Trustee; (ii) pay all taxes or assessments of whatever kind or nature imposed upon or against the Trust or the Trustee in connection with the Assets or any part thereof; (iii) collect and remit all taxes and assessments of whatever kind or nature required to be collected and remitted by the Trust or the Trustee in connection with their activities or the Assets or any part thereof; (iv) appeal, settle or compromise tax claims or liabilities; and (v) for the foregoing purposes, to make such returns, elections and submissions and do all such other acts and things as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable.

(m) ***Power to Appoint Auditors.*** The Trustee shall have the power to select and appoint and discharge and re-appoint, in its sole and absolute discretion, an auditor or auditors of the Trust and to settle and pay the fees of any such auditor or auditors from any account of the Trust.

(n) ***Form of Accounts.*** The Trustee shall have the power to determine and change from time to time, in its sole and absolute discretion, the method or form in which the accounts of the Trust will be kept and shall not be required to keep or provide accounts in the form usually required by

law to be kept or provided by trustees; provided that such method or form reasonably complies with generally accepted accounting principles in effect in Canada to the extent applicable.

(o) ***Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.

(p) ***Delegation of Discretion***. The Trustee shall have the power to delegate the right and power to exercise, or concur in the exercise of any discretion or power, conferred on the Trustee in this Declaration or conferred by law to any one or more of its directors, officers, employees, agents, representatives or to such other Person, as the Trustee, in its sole and absolute discretion, may think is appropriate or advisable, including to one or more Administrative Services Agents and their respective employees, officers and directors under a related Administrative Services Agreement entered into by the Trust substantially on the basis contemplated in the Permitted Delegations Annex. In particular, the Trustee shall have the power to accept, rely on and follow the recommendations of an Electricity Distributor made under and having regard to the Permitted Delegation Annex with respect to a the identification of, and the determination of distributions (if any) to be made to, any Primary Beneficiary, except if and in so far as the Trustee has actual knowledge that (1) such Primary Beneficiary did not in fact satisfy the "Selection Factors" specified in the Principles Annex as of the applicable time of determination; and/or (ii) the amount recommended to be distributed to the Primary Beneficiary was not calculated in substantial compliance with, or was calculated in a manner that is manifestly contrary to the requirements set forth or contemplated in, the Permitted Delegation Annex or the applicable Administrative Services Agreement.

(q) ***Additional Powers.*** The Trustee shall have the power to perform and do all such other acts, to take such steps and to execute all such deeds, transfers, assignments, agreements and other documents and instruments as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable for the carrying out of any of its powers hereunder or of any of the activities of the Trust as herein contemplated, or for the carrying out, promotion or advancement of the interests of the Trust, whether or not any of such acts, things, documents or instruments are herein expressly mentioned. Any good faith determination by the Trustee as to what is necessary, desirable or appropriate to carry out its powers or activities of the Trust as contemplated under this Declaration or to carry out, promote or advance the interests of the Trust shall be conclusive. Any construction of this Declaration or any determination as to the activities of the Trust or the existence of any power or authority hereunder made in good faith by the Trustee, relying upon the advice of counsel, shall be conclusive. In construing the provisions of this Declaration, there shall be a presumption in favour of a grant of power to the Trustee.

SECTION 5
CONCERNING THE TRUSTEE

5.1 Duty of Trustee

In performing its duties and exercising its powers under this Declaration, the Trustee shall act honestly, in good faith and with a view to the best interests of the Trust and the Beneficiaries and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances (the "**Standard of Care**"). The Trustee shall observe and act in accordance with the terms of, and shall observe and comply with the limitations and

restrictions set forth in, this Declaration, including having due regard to the principles set forth in the Principles Annex. To the extent that the Trustee has so delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty as a trustee to exercise prudent oversight in relation to such delegation. Unless required by law, the Trustee will not be required to give any security, bonds or sureties in any jurisdiction for the performance of any of its duties and obligations under this Declaration. The Trustee (including the individual members of the Board of Trustees) will not be required to devote its entire time to the trust activities.

5.2 Limitation of Liability

The Trustee shall not be personally liable in tort, contract or otherwise to any Beneficiary or any other Person for any loss or diminution in the value of the Assets, or for any action or failure to act on the part of the Trustee or any of its employees or agents or any other Person, and shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses incurred by or against the Trust, howsoever arising, and resort will be had solely to the Assets for the payment, performance or satisfaction thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure**s** with respect to any obligation under this Declaration. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

5.3 Liability of Trustee under Contracts

Any document or instrument creating a liability or obligation of the Trust or of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee of the Trust and will be binding upon the Trustee only in its capacity as trustee hereunder and resort may not be had to, nor recourse or satisfaction be sought from, the property of the Trustee other than the Assets, whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Trust, or from its employees or agents, and in all cases resort will be had solely to the Assets for the payment, performance or satisfaction of any such liability or obligation. However, the foregoing limitations in this Section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct. Each document or instrument creating a liability or obligation of the Trust or of the Trustee shall contain a provision providing for the aforesaid limitation of liability.

5.4 Funds of the Trustee

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

5.5 Indemnification of Trustee

In addition to and without limiting any other protection hereunder or otherwise by law of the Trustee and its respective employees, agents, representatives and assigns (in this Section 5.5, collectively, the "**Representatives**"), the Trustee and its respective Representatives shall be indemnified, defended and saved harmless out of the Assets from, against and in respect of any and all liabilities arising or related to actions taken or omitted to be taken by any agent of the

Trustee, losses, claims (including any claim arising out of the assessment of any tax on income by a taxing authority), damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (including, without limitation, any and all legal and advisor fees and disbursements) (in this Section 5.5, collectively, the "**Liabilities**") of whatever kind or nature which may at any time be suffered by, imposed upon, incurred by or asserted against the Trustee and its Representatives, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee, in each case made in connection with its acting as Trustee hereunder, in each case except and to the extent that the Liabilities are a result from or are caused by gross negligence, wilful misconduct, bad faith or breach of the Confidentiality obligations described in section 5.9. Further, except as provided in section 5.2, the Trustee shall not be liable to any Beneficiary for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in value of the Assets. Notwithstanding any other provision hereof, the obligations provided for in this section 5.5 shall survive any termination of the Trust, whether by reason of removal or resignation of the Trustee, termination or discharge of this Declaration or otherwise.

5.6 Reliance upon Advice

Subject to section 5.1, in performing its duties and exercising its powers hereunder, the Trustee may rely and may act or not act, and shall be fully protected in relying and acting or not acting, upon (a) any statement, telecopy or other electronic means of communication, writing, notice, resolution, report, opinion or other document or conversation believed by its to be genuine and correct and to have been signed, sent or made by the proper Person; (b) any opinion or advice received or information obtained from auditors, solicitors, or other professional advisers, whether retained by the Trustee or otherwise, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting or not acting; and (c) the advice and actions of any Administrative Services Agent, including in connection with the delegations and reliances contemplated under the Permitted Delegations Annex. For greater certainty, it shall not be necessary for the Trustee to ascertain whether or not the Persons who have executed, signed or otherwise issued, authenticated or receipted such papers, writings or documents (including any Administrative Services Agreement, License Agreement or any other contract entered into by the Trustee) have authority to do so or that they are the same Persons named therein or otherwise to pass upon any requirement of such papers, writing or documents that may be essential for their validity or effectiveness or upon the truth and acceptability.

5.7 Replacement of the Original Trustee

As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the

Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

5.8 Rules and Procedures of the Board of Trustees

(a) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees.

(b) ***Meetings.*** Subject to the Board of Trustees' discretion to make such rules and procedures that they may deem desirable, meetings of the Board of Trustees may be held at such time and place as the trustee members of the Board of Trustees may agree upon or as they may fix by resolution for the purpose or if the meeting is called as hereinafter mentioned then at such time as may be designated in the notice calling the meeting. A meeting of the Board of Trustees may be called at any time by any two members of the Board of Trustees by two Business Days' notice given to the members of the Board of Trustees. No notice of any Board of Trustees' meeting shall be necessary when a quorum is present if those comprising the quorum consent to the transaction of the affairs of the Trust and the absent trustee or trustees, if any, either before or after the meeting shall waive in writing notice of the meeting. Meetings of the Board of Trustees may be conducted in person, by telephone, or in such other manner as determined by the Board of Trustees. The Board of Trustees may elect a Chairperson.

(c) ***Quorum.*** At any meeting of the Board of Trustees, a majority of the voting members of the Board of Trustees shall be a quorum irrespective of the number of members in office. The decision of the majority of the voting members where quorum exists shall govern and shall be binding for all purposes and shall be acted upon and carried out in the same manner and with the same effect as if all the voted members concurred therein; provided always that in the case of equality of votes the Chairperson, if any, shall not be entitled to cast a second or deciding vote.

(d) ***Power to Adopt Rules and Procedures.*** The Board of Trustees may make such rules and procedures not inconsistent herewith as it may deem desirable for the proper management and administration of the Trust and the discharge of the responsibilities of the Board of Trustees.

(e) ***Replacement of Members of the Board of Trustees***. The Board of Trustees shall have the power to replace any vacancy arising following the Original Trustee Replacement Date according to such rules and procedures as they deem appropriate subject to compliance with the Selection Factors specified in Trustee Replacement Annex and having regard for such considerations necessary to ensure that the composition of the Board of Trustees will be able to discharge its responsibilities in respect of the Declaration. If necessary, the Board of Trustees may fill any vacancy by application to the Courts of Ontario in the event of an unfilled vacancy.

(f) ***Decisions of the Board of Trustees.*** Decisions and actions of the Board of Trustees shall be made by voting, with each individual voting member having one vote. Subject to quorum requirements, a majority vote shall be determinative in respect of such decisions and actions. Subject to quorum requirements, any decision or action taken by the majority of voting members s will represent the decision or action of the Trustee, and not any member of the Board of Trustees.

(g) ***Conflicts of Interest.*** With respect to any matter before the Board of Trustees, to the extent of a conflict of interest, whether actual, perceived or potential, involving a member of the Board of Trustees' personal interests and a matter concerning the Trust, such member shall abstain from voting on the matter or taking any other discretionary action on the matter. For the purposes of the foregoing, no member of the Board of Trustees shall be deemed to have a conflict by reason only that the member holds any office or position with an Electricity Distributor, social services agency or governmental or quasi-governmental agency or entity (such as the Independent Electricity System Operator); provided, however, that in relation to any decision of the Board of Trustees pertaining specifically to a particular Electricity Distributor, any member of the Board of Trustees who is a director, officer or employee of the Electricity Distributor would be expected to recuse himself or herself from participating in deliberations, discussions or voting in respect of such decision.

(h) ***Expense Reimbursements to Members of the Board of Trustees.*** Members of the Board of Trustees shall be entitled to reimbursement for and in respect of their out-of-pocket expenses reasonably incurred in discharging their duties and obligations as members of the Board of Trustees. Members of the Board of Trustees shall serve without compensation.

5.9 Confidentiality

Notwithstanding the resignation or removal and discharge from the trusts and powers reposed in and conferred on the Trustee by this Declaration, or the termination of this Declaration, the Trustee so resigning or removed shall continue to treat as confidential all information relating to the Trust, the Assets and the Beneficiaries and shall only be entitled to make disclosures concerning such information if disclosure is required in the performance of the functions of the resigning or removed Trustee or is ordered by a court of competent jurisdiction or is otherwise required by law. The Trustee shall not be responsible or liable to any Person for any loss or damage arising out of or in any way sustained or incurred in any way relating to any such required disclosure. The obligations arising under this section 5.9 shall survive the termination of the Trust.

5.10 Vesting in Successor Trustee

Any successor trustee (including any reconstituted Board of Trustees) shall automatically become vested with the Assets and with the same powers, rights, duties, responsibilities and trusts as if it, he or she had originally been named as Trustee under this Declaration, without the requirement of any further instrument or act or conveyance, and the Trustee ceasing to act shall execute all such transfers and other documents and do all such other acts or things as may be necessary or desirable to assign, transfer, deliver to, and vest in, the successor trustee, upon the trusts expressed in this Declaration, all the Assets and all the rights, powers and trusts of the Trustee ceasing to act. The expense of any act, document, deed or other instrument or thing

required under this Section 5.10, including for greater certainty, outstanding fees and unreimbursed expenses of the Trustee (including any member of the Board of Trustees) ceasing to act, shall be satisfied from the Assets.

5.11 Execution of Instruments

The Trustee shall have the power to execute all deeds, transfers, agreements, promissory notes and other instruments on behalf of the Trust. Such power may be exercised by any one or more Administrative Services Agents acting in accordance with any delegated right to do so pursuant to an applicable Administrative Services Agreement, and any such execution of instrument by an Administrative Services Agent, acting in such capacity as agent of the Trust pursuant to the terms and conditions of such Administrative Services Agreement shall be deemed to be a proper execution of such instrument by the Trustee and shall be binding for all purposes on the Trust.

5.12 Decisions by the Trustee

If there is more than one Trustee, decisions of the Trust may be made by a majority of Trustees eligible to vote on the applicable matter. Whenever the Trustees are unable to agree in relation to the commission or omission of any act or howsoever in the execution of the Trust, the decision of a majority of such Trustees shall prevail.

SECTION 6
AMENDMENTS AND SUPPLEMENTS

6.1 Amendments

Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; [provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements may:

(a) add provisions for the replacement of or appointment of additional trustees to act with the Original Trustee prior to the Original Trustee Replacement Date;

(b) in the case of the Original Trustee, add provisions to those contemplated in the Trustee Replacement Annex in respect of the appointment of the members and the formation and empowerment of the Board of Trustees;

(c) in the case of the Original Trustee, vary the terms and requirements applicable to the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursements and such other matters, in each case as the Advisory Committee may indicate are necessary be made in order to attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee specifies are to be appointed as members of the Board of Trustees in accordance with its recommendations;

(d) add additional or replace existing Trustees;

(e) add to or reasonably clarify the principles set forth in the Principles Annex;

(f) add to or reasonably clarify the delegations and activities contemplated to be made in the Permitted Delegation Annex;

(g) include provisions for the management of the Trust by the Trustees, including the making of rules, requirements and procedures governing the decision-making of the Board of Trustees;

(h) add provisions for the replacement of members of the Board of Trustees (in addition to those provisions contemplated in section 5.7 and the Trustee Replacement Annex);

(i) provide for the engagement of any Person or Persons as managers, administrators or other service providers to the Trust, including any additional or replacement Administrative Services Agent or representative thereof;

(j) specify supplemental procedures for the identification of Primary Beneficiaries and the exchange of information with Electricity Distributors in connection with identifying such Primary Beneficiaries; or

(k) specify procedures for the transfer and transmission of funds from the Trust or any Administrative Services Agent acting on its behalf and with delegated responsibility over funds constituting Assets, to or for the benefit of, Beneficiaries or their designated representatives, payees or assignees.

6.2 Supplemental Declarations

The Trustee is authorized to execute any supplemental declaration of trust (including one or more amendments and restatements from time to time of this Declaration) to give effect to amendments to this Declaration made pursuant to section 5.1.

SECTION 7
TERMINATION

7.1 Duration

Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full.

7.2 Termination and Distribution of Assets

The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust

have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection.

7.3 Distribution of Assets on Final Distribution Date

If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3.

SECTION 8
ACCEPTANCE OF TRUSTS

8.1 Acceptance of Trusts

The Trustee hereby accepts the trusts and duties contained in this Declaration and agrees to perform the same upon the terms and conditions hereof until discharged therefrom.

[Signature Page Follows]

The Trustee has executed this Declaration as of the date first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

PRINCIPLES ANNEX

The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust:

1. Identification of Primary Beneficiary Payees

1.1 **[Except in exceptional circumstances,]** a Primary Beneficiary would not be expected to receive a benefit from the Trust unless at the time of consideration it satisfies, in addition to the requirements contemplated in the definition of "Primary Beneficiary", each of the following criteria (the "**Selection Factors**"):

(i) it has a participant agreement **[with an applicable Electricity Distributor]** to undertake measures (its "**Energy Plan**") to improve the electricity efficiency and/or promote the conservation of electricity at its Ontario residence;

(ii) its Energy Plan involves one or more Eligible Measures, as may be designated by the Trustee from time to time from;

(iii) it confirms that:

1. the primary purpose of its Energy Plan is the conservation and efficient use by the Primary Beneficiary of electricity, and is not for the purposes of the Primary Beneficiary making a profit;

2. it would otherwise not have the financial resources to undertake the Eligible Measures included in its Energy Plan; and

3. it would otherwise not be **[a HAP Eligible Person][eligible to receive amounts in respect of the Eligible Measures under HAP]**;

(iv) it has demonstrated a need for financial assistance on the basis that its periodic electricity bills represent a financial burden, relative to its available financial resources; and

(v) such other criteria as the Trustee may determine, including based on the recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.2 It is recognized that, in furthering the Purpose, an efficient basis upon which to allocate funds to the Primary Beneficiaries across different areas and regions within Ontario may be based on the areas and regions serviced by the Electricity Distributors operating within Ontario.

1.3 It would not be contrary to the Purposes if funds are made available by the Trustee to the Primary Beneficiaries unequally across different areas and regions within Ontario, and it is expect that in making such an unequal division it would be appropriate to have regard to:

(i) broad economic parameters of economic activity and the specific financial resources of the residents of the areas and regions, in each case as an indication of the relative need of such residents across the areas and regions;

(ii) electricity use and efficiency levels of residential electricity customers across the areas and regions;

(iii) specific regional indicators of economic weakness and need; and

(iv) such other factors as the Trustee may determine are relevant, including based on the submissions, advice and recommendations of Electricity Distributors or other knowledgeable Persons made on the basis and having regard to the delegations contemplated by the Permitted Delegations Annex or any applicable Administrative Services Agreement.

1.4 It is recognized that, in furthering the Purpose, the designated Electricity Distributor for an area or region in which a Primary Beneficiary resides would be expected to:

(i) be a reliable source for the purpose of assessing and confirming whether the Primary Beneficiary satisfies the Selection Factors;

(ii) be an efficient intermediary for the purpose of communicating with the Primary Beneficiary, including with respect to matters such as regarding the availability, terms, conditions and intended purposes of Program;

(iii) be able to facilitate an efficient payment of distribution determined to be made to or on behalf of the Primary Beneficiary, having regard to the Electricity Distributor's established practices, procedures and systems for dealing with its customers; and

(iv) have established contractual arrangements with the Primary Beneficiary that may apply to the protection and confidentiality of information provided by or respecting the Primary Beneficiary, which information may be useful in the consideration by the Electricity Distributor in its assessment of whether the Primary Beneficiary satisfies the Selection Factors, which information may not otherwise be available or readily accessible or verifiable by the Trustee.

1.5 It is recognized that, in furthering the Purpose, the Electricity Distributor for an area or region in which a Primary Beneficiary resides will have market and utilization information that may be useful in assessing the relative needs of Primary Beneficiaries within its area or region. Such information is expected to be relevant in assessing the extent to which one such Primary Beneficiary's financial needs and the merits of its Energy Plan are greater or more compelling than those of another such Primary Beneficiary, which comparison may be relevant to the extent that the funds allocable to the Primary Beneficiaries resident in the area or region are otherwise insufficient to meet the requests for funding by all such Primary Beneficiaries.

1.6 Accordingly, it is recognized that, in furthering the Purpose, it is consistent with the Purpose that the recommendations of Electricity Distributors be utilized and relied upon

by the Trustee to guide the process of identifying particular Primary Beneficiaries in making distributions to the Primary Beneficiaries.

1.7 If an Electricity Distributor for a particular area or region is unable or unwilling to assess or confirm the application of the Selection Factors to Primary Beneficiaries residing in the area or region or to make recommendations in relation to such matters, one or more of the following may provide a suitable alternative source of information and for information gathering, assessment and confirmation purposes in relation to such area or region:

(i) other Electricity Distributors operating in adjacent or other areas or regions in Ontario;

(ii) the Ontario Energy Board;

(iii) the Independent Electricity System Operator; and

(iv) anyone else having relevant expertise and access to information regarding the electricity market of the Province, in each case as may be considered relevant by the Trustee.

1.8 To the extent that privacy law or other legal requirements limit an Electricity Distributor from providing or making available specific information respecting the application of the Selection Factors to a particular Primary Beneficiary or group of Primary Beneficiaries, it is recognized that, in furthering the Purpose, it may be appropriate to redact or make generic affected information regarding such Primary Beneficiary in connection with the identification and confirmation of a Primary Beneficiary's eligibility and participation in the Program. If such limitations or restrictions would limit an Electricity Distributor from providing or confirming the name of a particular Primary Beneficiary to the Trustee, then it should be sufficient that such information may be obtained or disseminated on a confidential basis if and when required by the Trustee for the proper administration of the Trust and on that basis such impediments should not disqualify a Primary Beneficiary from participating in the benefits of the Program, provided that that the confidential record-keeping of the Electricity Distributor would be available in connection with the application of any applicable legal process predicated on the identification of such Primary Beneficiary for the purposes of substantiating its rights as a Primary Beneficiary of the Trust or as to the validity or subsistence of the Trust.

2. Eligible Measures

2.1 It is expected that the Trust will identify eligible measures that, taking into consideration the principles set forth in the Principles Annex, have regard to the following (the "**Measures Factors**"):

(i) is the measure generally expected to result in reduced electricity consumption by a Primary Beneficiary if properly installed and used;

(ii) is the measure recognized under another Provincial program as being appropriate for achieving electricity conservation among a population analogous to the Primary Beneficiaries;

(iii) does the measure present any unacceptable health or safety considerations, either with respect to the Primary Beneficiary, a party providing or installing the measure, or the physical environment;

(iv) is the measure broadly available to residents across different areas and regions of the Province; or

(v) is the measure a requirement or precursor to another measure, the other measure being one which meets any of the other Measures Factors.

2.2 In identifying and applying the Measures Factors, Electricity Distributors would be expected to have expertise in assessing the suitability of efficiency and conservation measures in their respective areas and regions, which may differ across areas and regions across the Province based on factors (among other things) such as the climate, geography, density, electricity infrastructure, residential structures, and electricity use rates applicable within such areas or regions.

2.3 The measures specified in Schedule A to this Principles Annex may initially be considered to be consistent with the Measures Factors (subject to change as contemplated under the Permitted Delegations Annex).

3. Promotion of the Program

3.1 It is expected that the Trustee will undertake or engage others to undertake diligent efforts to promote the availability, terms and benefits of the Program to Primary Beneficiaries, including by establishing consistent communications through the Electiricy Distributors.

3.2 It is expected that the Trustee will acknowledge the financial support of the Province in connection with the establishment and the funding for the Program, including in any external communications to or marketing directed at the Electricity Distributors and the Primary Beneficiaries.

4. Conduct of the Trust and the Program

4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the Trust and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is substantially consistent with the accountability provisions contemplated in the Transfer Payment Agreement and the principles in the Province's Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex.

4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:

(i) act prudently and in furtherance of the Purpose;

(ii) report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program;

(iii) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province;

(iv) return of Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose.]

4.3 Electricity Distributors are not intended to directly profit from distributions of funds made from the Trust, although it is recognized that the objectives of electricity efficiency and conservation of Primary Beneficiaries located in the service area or region of an Electricity Distributor, and the cost savings and improved credit worthiness of such Primary Beneficiaries, may be financially beneficial to the Electricity Distributor.

4.4 Distributions from the Trust are intended to allow receiving Primary Beneficiaries to undertake Eligible Measures at no or minimal personal cost.

4.5 Without in any way limiting the discretion of the Board of Trustees to extend the period during which the benefits of the Program may be available to the Primary Beneficiaries, up to and including the Final Distribution Date, it is expected that the Trust Assets would be distributed to Primary Beneficiaries during the period from the Original Trustee Replacement Date to April 30, 2019.

SCHEDULE A TO THE PRINCIPLES ANNEX
INDICATIVE ELIGIBLE MEASURES[1]

Initial Specified Measures
Block Heater Timer (just timer) – rated for outdoor use, have at least a 15 amp/1800 watt capacity, be cold weather resistant, bear a C-UL or CSA certification mark
Power bar with integrated timer, and switched power outlets, four each for a total of 8 outlets, have a total capacity of 15 amps. The switched outlets must remain "live", independent of timer settings, so long as the power bar itself remains switched on. The power bar must bear either a C-UL or CSA certification mark.
Efficient Showerheads (standard) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Showerhead (handheld) - rated at no more than 4.8 Lpm (1.25 U.S. gpm) and be of the laminar flow type (non-aerating).
Efficient Aerators (kitchen) - rated no more than 5.7 Lpm (1.5 U.S. gpm), dual threaded to allow installation in both thread type faucets, swivel type with pause lever.
Efficient Aerators (bathroom) - rated no more than 3.8 Lpm (1.0 U.S. gpm), be dual threaded to allow installation in both thread type faucets.
Hot Water Tank Pipe Insulation - 1/2" inside diameter – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Pipe Insulation - 3/4 " inside diameter - – foam, meets ASTM –C547-00, minimum 3/4" thick
Hot Water Tank Insulation - fibreglass R10 (fits up to a 60 gal tank) – not bubble wrap
≤11W ENERGY STAR® Qualified LED A Shape (60W) (minimum 600 Lumen output) (Formerly: 7W – 11W ENERGY STAR® Qualified LED A Shape (60W))

[1] These measures are indicative. Eligible measures added to HAP during the administration of the Trust may also be appropriately considered relevant by the Trustee.

Initial Specified Measures
≤14W ENERGY STAR® Qualified LED A Shape (75W) (minimum 800 Lumen output) (Formerly: 10W – 14W ENERGY STAR® Qualified LED A Shape (75W))
≤23W ENERGY STAR® Qualified LED A Shape (100W) (minimum 1600 Lumen output) (Formerly:17W – 23W ENERGY STAR® Qualified LED A Shape (100W))
≤16W ENERGY STAR® Qualified LED PAR 20 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 20)
≤16W ENERGY STAR® Qualified LED PAR30 & PAR38 (minimum 600 Lumen output) (Formerly: 8W – 12W ENERGY STAR® Qualified LED PAR 30)
≤23W ENERGY STAR® Qualified LED PAR (minimum 1100 Lumen output) (Formerly: 14W – 18W ENERGY STAR® Qualified LED PAR 38)
≤6W ENERGY STAR® Qualified LED MR 16 / PAR 16 (minimum 250 Lumen output) (Formerly: 7W – 10W ENERGY STAR®
Qualified LED MR 16 / PAR 16 - GU 10 Base)
≤11W ENERGY STAR® Qualified LED MR 16 (minimum 400 Lumen output) (Formerly: 7W – 12W ENERGY STAR® Qualified LED MR 16 GU 5.3 Base)
ENERGY STAR® LED Wet Location Rated PAR lamp ≤ 23 Watt (minimum 1100 Lumen output)
Recessed Downlight Fixture including LED with Light Output >600 and <800 lumens (Retrofit Measure List)
Recessed Downlight Fixture including LED with Light Output >800 lumens (Retrofit Measure List)
Indoor Drying Rack

Extended Measures
Replace refrigerator with ENERGY STAR qualified refrigerator - 15.5 - 16.9 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with ENERGY STAR qualified refrigerator - 17.0 - 18.4 cubic foot top freezer, automatic defrost, refrigerator/ freezer, no through the door ice service
Replace refrigerator with a refrigerator that has a consumption level of less than 425 kwh, 10 – 12.5 cubic foot top freezer, automatic defrost, refrigerator freezer, no through the door ice service
Replace freezer with ENERGY STAR qualified freezer - 12-14.4 cubic foot freezer
Replace freezer with ENERGY STAR qualified freezer - 14.5 - 16.0 cubic foot freezer
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 6,000 – 7,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 8,000 – 9,999 BTU/hr with C-UL or CSA certification mark
Replace existing window air conditioner with ENERGY STAR qualified window air conditioner - 10,000 – 12,000 BTU/hr with C-UL or CSA certification mark
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 14.2 - 21.2 l/day (30-44.9 pints/day) dehumidifier
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 21.3 - 25.4 l/day (45-53.9 pints/day) dehumidifier

Extended Measures
Replace existing dehumidifier with ENERGY STAR qualified portable dehumidifier - 25.5 - 35.5 l/day (54-75 pints/day) dehumidifier
Programmable Thermostat – line voltage – meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C
Programmable Thermostat – low voltage - meets CAN/CSA-C828-06 standard, minimum performance: Droop: 1.5°C, Differential: 0.5°C, Precision 0% within 0.5°C of the original set point of 22°C

Weatherization Measures
Comprehensive Draftproofing (caulking, foam and weather stripping, and application of same) – lifespan of 20 years plus If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application. **Attic Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre

Weatherization Measures
for Buildings **Wall Insulation (including installation):**
cellulose: CAN/ULC-S703-01 Amendment 1 - Cellulose Fibre Insulation (CFI) for Buildings OR 2) Mineral Fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre **Basement Insulation (including installation):**
mineral fibre: CAN-ULC-S702-97-EN Standard for Thermal Insulation Mineral Fibre for Buildings Vapour Barrier: 69009-CAN/CGSB-51.34-m86 If one or two component polyurethane foams are used, the products and installations must conform to: • CAN/ULC-S710.1 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 1: Material Specification. • CAN/ULC-S710.2 Standard For Thermal Insulation – Bead Applied One-Component Polyurethane Air Sealant Foam, Part 2: Application. • CAN/ULC-S711.1 Standard for Thermal Insulation – Bead Applied Two-Component
Polyurethane Air Sealant Foam, Part 1: Material Specification • CAN/ULC-S711.2 Standard for Thermal Insulation – Bead Applied Two-Component Polyurethane Air Sealant Foam, Part 1: Material Specification, and Part 2: Application.

Heat Pumps (Selection of manufacturers and technologies to meet the US federal minimum efficiency standard for ASHPs, as of 2015, is 13.0 SEER and 7.7 HSPF. Energy Star–certified models offer roughly 9 percent more efficiency than most new uncertified ASHPs and 20 percent more efficiency than existing models that may be in place)
Ductless Multiport Heat Pump
Cold Climate Ductless Heat Pump
Cold Climate Multiport Ductless Heat Pump

Cold Climate Ducted Heat Pump

SCHEDULE B TO THE PRINCIPLES ANNEX
PERMITTED EXPENSE REIMBURSEMENTS

[NTD: Insert the Province's Travel, Meal and Hospitality Expenses Directive.]

PERMITTED DELEGATION ANNEX

1. Under section 4.2(g) of the Declaration, the Trustee has the power to: (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

2. In accordance with section 4.2(g) of the Declaration, consistent with the principles set forth in the Principles Annex, the Trustee or its agent will seek to enter into one or more Administrative Services Agreements with individual Electricity Distributors under which the Electricity Distributors will act as Administrative Service Agents to the Trustee. In this manner, the Trustee will delegate certain of its powers and duties to the Electricity Distributors.

3. Under section 5.1 of the Declaration, to the extent the Trustee has delegated any of its duties or powers, it shall be deemed to have satisfied the Standard of Care in respect of the subject matter of such delegation, subject to the Trustee's overall duty to exercise prudent oversight thereof. The Trustee is entitled to rely on an Electricity Distributor to discharge the duties delegated to it, as Administrative Services Agent, pursuant to an Administrative Services Agreement as described in this Annex.

4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address the following points in particular:

    a. **Identification of Applicable Primary Beneficiary Payees and Determination of Individual Distribution Amounts**

        i. Each Electricity Distributor would make an initial assessment of the financial needs of Primary Beneficiaries within its designated service area or region, having regard to the Selection Factors set forth in section 1.3 of the Principles Annex, together with applicable economic data, in order to prepare and provide to the Trustee an estimate of the number of Primary Beneficiaries who the Electricity Distributor reasonably expects would satisfy the Selection Factors.

        ii. Each Electricity Distributor would make an initial assessment of the measures it would recommend be included as Eligible Measures, having regard to the Measures Factors set forth in section 2.1 of the Principles Annex, in order to prepare and provide to the Trustee an estimate of the average cost per Primary Beneficiary Payee (as defined below) of such Eligible Measures that the Electricity Distributor reasonably expects would apply in respect of Primary Beneficiaries resident in its service area or region.

iii. Based on the product of (i) and (ii), above, and such other considerations as it considers to be directly relevant, each Electricity Distributor would make a written recommendation to the Trustee regarding the aggregate funding amount that the Electricity Distributor anticipates would be utilized under the Program by the Primary Beneficiaries resident in its service area or region (the "**Local Funding Estimate**"). Such recommendation would be accompanied, when submitted to the Trustee, by a detailed explanation regarding the assumptions, financial parameters, suitability considerations and other information underlying the Local Funding Estimate (including the type of information contemplated by the Selections Factors and the Measures Factors, which would be relied upon by the Trustee in its assessment regarding the allocation of available funding to or for the benefit of the Primary Beneficiaries across the specified areas and regions of Ontario.

iv. The Trustee would inform the Electricity Distributor regarding the aggregate of the amount determined by the Trustee to be made available under the Program for Primary Beneficiaries in the Electricity Distributor's designated service area or region (for each Electricity Distributor, its "**Maximum Electricity Distributor Allocation**") and as to any maximum amount that may be paid to or for the benefit of any single Primary Beneficiary **[or group of related Primary Beneficiaries]** located in the servicer area or region of the Electricity Distributor (the "**Maximum Primary Beneficiary Amount**"). The Maximum Electricity Distributor Allocation and Maximum Primary Beneficiary Amount may vary between areas and regions, among the Primary Beneficiaries within such areas and regions, and may be increased by the Trustee from time to time in its discretion.

v. Each Electricity Distributor would apply the principles set forth under "Identification of Primary Beneficiary Payees" in the Principles Annex to identify and make recommendations to the Trustee regarding the amount of funds (if any) to be distributed to or for the benefit of Primary Beneficiaries resident within its service area or region from time to time (the "**Primary Beneficiary Payees**").

vi. Each Electricity Distributor would ensure that the aggregate of the amounts it recommends be distributed to or for the benefit of Primary Beneficiary Payees from time to time does not exceed (1) its Maximum Electricity Distributor Allocation and (2) for any single Primary Beneficiary **[or group of related Primary Beneficiaries]** located in the service area or region of the Electricity Distributor, the lesser of (x) the applicable Maximum Primary Beneficiary Amount and (y) the estimated costs (including any applicable taxes, but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) to be incurred by or on behalf of such Primary Beneficiary (whether or not such costs have been paid or remain outstanding) in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence.

vii. The Trustee would provide written confirmation to each Electricity Distributor:

1. Either (x) that the recommendations specified of the Electricity Distributor in clause (v), above, have been accepted, or (y) as to the specific reasons for any non-acceptance; and

2. The amount of the distributions to be paid to or for the benefit of each Primary Beneficiary Payee that is resident in the Electricity Distributor's service area or region.

viii. With respect to each Primary Beneficiary resident in a Electricity Distributor's service area or region that is confirmed as a Primary Beneficiary Payee, the Electricity Distributor would provide the Trustee written confirmation as to:

1. The identity of such Primary Beneficiary Payee; and

2. The amount of the distribution paid to or for the benefit of such Primary Beneficiary Payee.

ix. If the amount of a distribution to be made to a Primary Beneficiary Payee is based on the estimated costs to be incurred by or on behalf of such Primary Beneficiary and, prior to making the distribution to the Primary Beneficiary Payee, the Electricity Distributor determines that the actual costs (including any applicable taxes but excluding any amount payable to the Electricity Distributor by or on behalf of the Primary Beneficiary) incurred or to be incurred by or on behalf of such Primary Beneficiary in respect of Eligible Measures applied or to be applied in respect of the Primary Beneficiary's Ontario residence has or would be less than such estimated costs, then the amount to be distributed to the Primary Beneficiary shall be based on such actual costs.

b. **Making of Distributions to Primary Beneficiaries**

i. It is expected that promptly after the Trustee confirms the identity of a Primary Beneficiary Payee resident in an Electricity Distributor's service area or region and the amount of the distribution to be paid to or for the benefit of such Primary Beneficiary Payee, the Trustee would arrange for payment to or on the direction of the Electricity Distributor of an amount equal to the amount of such distribution.

ii. It is expected that promptly upon receipt of funds in respect of a distribution to be made to a Primary Beneficiary Payee, the Electricity Distributor would arrange for payment of the full amount of such distribution to or for the benefit of the Primary Beneficiary Payee (including by direct payment to a third party of, or as a reimbursement or rebate of, the costs of applicable Eligible Measures installed at the residence of and for the benefit of the Primary Beneficiary Payee), without reduction or set-off by the Electricity Distributor.

iii. If the amount paid to an Electricity Distributor in respect of a distribution to be made to a Primary Beneficiary exceeds the actual amount of the

distribution made to or on behalf of the Primary Beneficiary, it is expected that the Trustee would require Electricity Distributor to return such excess to the Trustee, whereupon the proceeds of such returned amount shall continue to form part of the Assets.

c. **Establishment of Operational, Administrative, Record-Keeping and Other Systems and Policies by Electricity Distributors to facilitate the Program**

i. It is expected that the Electricity Distributor would establish such operational, administrative, record-keeping and other systems and policies as are necessary to facilitate the Program and perform its duties under the Administrative Services Agreement, including systems or policies to: identify Primary Beneficiary Payees; comply with applicable privacy and regulatory laws; communicate with Primary Beneficiaries on behalf of the Trust; assess Eligible Measures; determine the Local Funding Estimate; monitor its recommendations to the Trustee against its Maximum Electricity Distributor Allocation and the Maximum Primary Beneficiary Amount; receive funds from the Trust in respect of distributions to the Primary Beneficiary Payees and transfer such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees; preparation and timely delivery to Primary Beneficiary Payees of such documents as are required by the *Income Tax Act* (Canada); and create and maintain records in respect of the foregoing.

ii. The Electricity Distributor would set up a separate bank account for the purpose of receiving funds from the Trust in respect of distributions to the Primary Beneficiary Payees and the transfer of such funds to the appropriate recipients for the benefit of the Primary Beneficiary Payees.

d. **Reporting, Record-Keeping, Inspection and Disclosure and Compliance Matters**

i. The Electricity Distributor would provide record-keeping, clerical and bookkeeping services relating to all matters relating to its recommendations and the performance of its other duties and obligations under its Administrative Services Agreement.

ii. The Electricity Distributor would keep and maintain all financial records and non-financial documents and records relating to the provision of services under its Administrative Services Agreement. **[NTD: Consider specifying any particular records regarding individual Primary Beneficiary Payees needed to ensure the proper function of the Trust or the Program]**

iii. The Electricity Distributor would provide to the Trustee quarterly and annual reports ("**Reports**") for the duration of its Administrative Services Agreement. Such Reports would set out, among other things, the amounts of the distributions paid to or for the benefit of applicable Primary Beneficiary Payees, the average distribution amount per such Primary Beneficiary Payee, the Eligible Measures for which distributions have been made, and the uptake of energy efficiency measures.

iv. The Electricity Distributor would agree to provide to the Trustee such information as is necessary for the Trustee to (v) comply with applicable law; (w) prepare financial statements for the Trust; (x) prepare and submit such documents as are required under the *Income Tax Act* (Canada); (y) comply with the Trust's applicable obligations under the Transfer Payment Agreement; and (z) such other matters as the Trustee reasonably requests.

v. The Trustee, its authorized representatives or an independent auditor would be permitted to, at its own expense, on twenty-four hours' notice to the Electricity Distributor and during normal business hours, inspect the records of and information respecting the Electricity Distributor to confirm its compliance with the Administrative Services Agreement, including regarding its processes for recommending the Primary Beneficiary Payees and their respective distribution amounts and regarding the delivery of Trust funds on behalf of the Trustee to or for the benefit of the Primary Beneficiary Payees.

e. **Standard of Care**

i. The Electricity Distributor would be required to agree to perform its duties provided under the Administrative Services Agreement exercising the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

ii. In performing its duties under the Administrative Services Agreement (including the recommending of Primary Beneficiary Payees to the Trustee), the Electricity Distributor would be required to agree to seek to avoid actual, potential or perceived conflicts of interest.

iii. The Electricity Distributor would be required to agree to that it would not, in performing its obligations under the Administrative Services Agreement, take any action which it knows or ought reasonably to know would cause the Trustee or the Trust to be in violation of any law, rule or regulation applicable to it.

f. **Expenses**

The Electricity Distributor would be eligible to receive reasonable compensation and reimbursement of its actual out-of-pocket costs associated with the performance of its duties and obligations under the Administrative Services Agreement, subject to compliance with requirements substantially equivalent to the Province's Travel, Meal and Hospitality Expenses Directive. Such compensation amounts and reimbursement entitlements would be specified in the Administrative Services Agreement.

g. **Representations**

The Electricity Distributor would make customary representations to the Trust regarding, among other things, its legal capacity; authorization; non-contravention of law or material contract to which it is a party; and the enforceability of the Administrative Services Agreement.

h. **Indemnification**

The Electricity Distributor would be required to agree to provide customary indemnities to the Trust and the Trustee from and against claims, damages and liabilities which may the Trust or Trustee may suffer or incur as the result of any breach of the Administrative Services Agreement by the Electricity Distributor or its representatives.

TRUSTEE REPLACEMENT ANNEX

1. The Advisory Committee shall consist of the following individuals:

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

   [Insert Individual Name]

2. In the event any member of the Advisory Committee resigns or is unable to act, it is expected that the remaining members of the Advisory Committee would appoint another resident of Ontario as a replacement.

3. On or before •, 2017, the Advisory Committee shall identify six residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):

   a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;

   b) each member demonstrates an expertise in conservation and low income programs;

   c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and

   d) it is expected that representation by the Government of Ontario will be non-controlling.

4. If the Advisory Committee determines that changes to the Declaration (including to this Trustee Replacement Annex) are necessary in order to (a) replace, or appoint additional trustees to act with, the Original Trustee prior to the Original Trustee Replacement Date or (b) attract and receive confirmation of appointment of appropriately qualified individuals that the Advisory Committee believes would be suitable candidates to serve as members of the Board of Trustees, the Advisory shall make recommendations regarding such necessary changes, including without limitation in respect of (i) any necessary limitations on the nature or scope of the appointment of the members of the Board of Trustees, (ii) the formation and empowerment of the Board of Trustees, and (iii) the duties, responsibilities, obligations, liabilities, indemnities, protections, limitations, restrictions, compensation, expense reimbursement entitlements of members of the Board of Trustees.

5. The Advisory Committee shall recommend that the existing Trustee appoint the individuals so identified to become the initial members of the Board of Trustees pursuant to section 5.7 of the Declaration.

6. If any of the individuals recommended under paragraph 4 or under this paragraph are not accepted and appointed by the existing Trustee pursuant to section 5.7 of the Declaration, the Advisory Committee shall forthwith identify and recommend an alternative individual or individuals willing to act and who whose presence as a member of the Board of Trustees would result in the Trustee collectively satisfying the criteria in paragraph 2 above.

7. Upon the appointment of six trustees (five voting and one non-voting) pursuant to section 5.7 of the Declaration, the Advisory Committee will be functus.

ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the • day of March, 2017 (the **"Effective Date"**)

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister of Energy

(the "Province")

- and -

Computershare Trust Company of Canada, in its capacity as trustee of Affordability Fund Trust

(together with its successors and assigns, the "Recipient" and, together with the Province, the "Parties")

BACKGROUND

Computershare Trust Company of Canada is the original trustee of the Affordability Fund Trust.

The Province wishes to provide Funds to the Recipient to be held, invested, applied and distributed in accordance with the terms of the Declaration of Trust (defined below), in furtherance of the Purpose (as defined in the Declaration of Trust), including having regard to the Principles set forth in Annex A.

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

ENTIRE AGREEMENT

This agreement (as amended, restated, supplemented or otherwise modified from time to time, the **"Agreement"**), including:

Schedule "A" - General Terms and Conditions
Schedule "B" - Project Specific Information
Schedule "C" - Project - Certain Obligations of the Recipient
Schedule "D" - Budget
Schedule "E" - Payment Plan
Schedule "F" - Reporting
Annex "A" - Principles, and
any amending agreement entered into as provided for below,

constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

AMENDING THE AGREEMENT

The Agreement may only be amended by a written agreement duly executed by the Parties.

ACKNOWLEDGEMENT

The Recipient:

(a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and

(b) agrees to be bound by the terms and conditions contained in the entire Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Minister of Energy

by:

_____ _____

Date Name: Serge Imbrogno

Title: Deputy Minister

Authorized Signing Officer

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of AFFORDABILITY FUND TRUST

by:

_____ _____

Date Name:

Title:

by:

_____ _____

Date Name:

Title:

I/We have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

(a) words in the singular include the plural and vice-versa;

(b) words in one gender include all genders;

(c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;

(d) any reference to dollars or currency will be in Canadian dollars and currency;

(e) "include", "includes" and "including" denote that the subsequent list is not exhaustive;

(f) where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Affordability Fund Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust, and, where any reference is made in the Agreement to an act to be performed by or for or on behalf of the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by or for or on behalf of the Trustee in its capacity as trustee of the Affordability Fund Trust; and

(g) it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.

1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Affordability Fund Trust" means the trust established and governed by the Declaration of Trust, and for greater certainty includes such trust operating under any other name that may be designated from time to time by the Trustee in accordance with the Declaration of Trust.

"BPSAA" means the Broader Public Sector Accountability Act, 2010 (Ontario).

"**Beneficiary**" has the meaning given to such term in the Declaration of Trust.

"Budget" means the Recipient's budget attached to the Agreement as Schedule "D".

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"**Declaration of Trust**" means the declaration of trust made as of March [•], 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province.

"Expiration Date" means the date on which this Agreement will expire and is the date set out in Schedule "B".

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Maximum Funds" means the maximum amount of Funds that the Province will provide the Recipient under the Agreement, as set out in Schedule "B".

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Party" means either the Province or the Recipient.

"**Person**" includes any individual, sole proprietorship, corporation, partnership, joint venture, association, society, club, board, chamber, joint-stock company, trust, trustee, unincorporated or incorporated organization or entity or government or any entity, agency or political subdivision thereof.

"**Program**" has the meaning given to such term in the Declaration of Trust.

"Project" means the undertaking described in Schedule "C".

"**Purpose**" has the meaning given to such term in the Declaration of Trust.

"PSSDA" means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

"Reports" means the reports described in Schedule "F".

"**Trustee**" means, initially, Computershare Trust Company of Canada, and any additional or replacement trustee in its capacity as trustee of the Affordability Fund Trust pursuant to the Declaration of Trust, including the Board of Trustees (as defined in the Declaration of Trust) and each of their respective successors and permitted assigns.

2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

(a) the Trustee is the trustee of the Affordability Fund Trust; and

(b) the Affordability Fund Trust is, and will continue to be for the term of the Agreement, a trust existing under and governed by the laws of the Province of Ontario.

2.2 Execution of Agreement. The Recipient represents and warrants that it has:

(a) the full power and authority to enter into the Agreement; and

(b) taken all necessary actions to authorize the execution of the Agreement.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:

(a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and

(b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0.

2.4 Supporting Documentation. Upon request, the Recipient will provide the Province with proof of the matters referred to in this Article 2.0.

3.0 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the later of the Expiration Date and the date on which the Affordability Fund Trust is terminated in accordance with the Declaration of Trust.

3.2 Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

4.0 FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province will:

(a) provide the Recipient up to the Maximum Funds to be held, invested, applied and distributed in accordance with the terms of the Project and the Declaration of Trust;

(b) provide the Funds to the Recipient in accordance with the Payment Plan attached to the Agreement as Schedule "E"; and

(c) deposit the Funds into an account designated by the Recipient, provided that the account:

(i) resides at a Canadian financial institution; and

(ii) is in the name of the Recipient.

4.2 Timing of Distributions to Beneficiaries. The expectations of the Province regarding when Funds will begin to be distributed by the Recipient to Beneficiaries are set out in Schedule C. The Recipient will have regard to those expectations in the exercise of its discretion as Trustee, in determining when Funds will be distributed to Beneficiaries in furtherance of the Purpose.

4.3 Use of Funds and Project. The Recipient will exercise its rights, duties and discretions under the Declaration of Trust so that the Funds are used, applied and distributed only for and in furtherance of the Purpose, including having regard to the Principles set forth in Annex A.

4.4 Province's Role Limited to Providing Funds. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.

4.5 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement will not exceed the Maximum Funds.

4.6 **Funding, Not Procurement.** For greater clarity, the Recipient acknowledges that:

(a) it is receiving funding from the Province for the Project and is not providing goods or services to the Province; and

(b) the funding the Province is providing under the Agreement is funding for the purposes of the PSSDA.

5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS

5.1 **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds.

6.0 CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** Except as expressly permitted by the Declaration of Trust, the Recipient is expected to implement appropriate processes and control to ensure that the Program and use, apply and distribute the Funds are without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where, except as expressly permitted by the Declaration of Trust:

(a) the Recipient; or
(b) any person who has the capacity to influence the Recipient's decisions,
has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project, or the Recipient's use, application or distribution of the Funds, or both.

7.0 REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Recipient will cooperate with the Province to accommodate the Province's on-going information and reporting objectives in order to enable the Province to be aware of the Recipient's activities in furtherance of the Purpose, and to that end the Recipient will be expected, from and following the Original Trustee Replacement Date, to:

(a) submit to the Province at the address referred to in Schedule "B", all Reports in accordance with the timelines and content requirements set out in Schedule "F", or in a form as specified by the Province from time to time, acting reasonably;

(b) submit to the Province at the address referred to in Schedule "B", any other reports as may be reasonably requested by the Province from time to time in accordance with the timelines and content expectations identified by the Province, acting reasonably;

(c) undertake diligent efforts so that such Reports and any such other reports are complete and accurate in all material respects; and

(d) have an authorized signatory of the Recipient sign-off on such Reports and other reports.

7.2 Record Maintenance. The Recipient will keep and maintain financial and other records necessary to permit it to satisfy its obligations under section 7.1 and to permit the Province to exercise its rights under section 7.3.

7.3 Inspection. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, inspect the records of and information respecting the Recipient to confirm its compliance with the terms of this Agreement, including to ensure consistency with the Purpose and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may take one or more of the following actions:

(a) inspect and copy the records and documents referred to in section 7.2;

(b) keep any copies made pursuant to section 7.3(a); and

(c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds to confirm that the Funds have been used, applied and distributed for and in furtherance of the Purpose, including a review of the Trust's processes, records, documents, as well as the processes and controls applied to obtain assurance that Funds disbursed to Electricity Distributors were used, applied and distributed for and in furtherance of the Purpose.

7.4 Disclosure. To assist in respect of the rights set out in section 7.3, the Recipient will disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and will do so in the form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

7.5 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

7.6 Auditor General. For greater certainty, the Province's rights under this Article are in addition to and do not limit any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

8.0 COMMUNICATIONS REQUIREMENTS

8.1 Publication. The Recipient will indicate, in any of its Program-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

9.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

9.1 FIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

10.0 INSURANCE

10.1 Insurance. The Recipient has made enquiries to confirm that insurance policies of the type contemplated in Schedule C are generally available in Canada.

11.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

11.1 Events of Default. An Event of Default will occur if:

(a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province;

(c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province;

(d) an insolvency event shall have occurred and be continuing with respect to the Recipient.

11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period;

(b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties;

(c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and

(d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c).

11.3 Opportunity to Remedy. If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and

(b) the Notice Period.

11.4 Recipient not Remedying. If the Province has provided the Recipient with an opportunity to

remedy the Event of Default pursuant to section 11.2(a), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;

(b) it becomes apparent to the Province that the Recipient cannot adequately remedy the Event of Default within the Notice Period; or

(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend any Notice period, or initiate any one or more of the actions provided for in section 11.2.

12.0 REPAYMENT

12.1 Debt Due. If, pursuant to the Agreement: the Province demands the payment of any Funds from the Recipient pursuant to section 11.2(c) such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

12.2 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

12.3 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in **[Schedule "B"]**.

12.4 Failure to Repay. Without limiting the application of section 43 of the Financial Administration Act (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

13.0 NOTICE

13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as set out in Schedule "B", or as either Party later designates to the other by Notice.

13.2 Notice Given. Notice will be deemed to have been given:

(a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or

(b) in the case of email, personal delivery or fax, one Business Day after the Notice is delivered.

13.3 Postal Disruption. Despite section 13.2(a), in the event of a postal disruption:

(a) Notice by postage-prepaid mail will not be deemed to be received; and

(b) the Party giving Notice will provide Notice by email, personal delivery or by fax.

14.0 SEVERABILITY OF PROVISIONS

14.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

15.0 WAIVER

15.1 Waivers in Writing. If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 13.0. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

16.0 INDEPENDENT PARTIES

16.1 Parties Independent. The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

17.0 ASSIGNMENT OF AGREEMENT OR FUNDS

17.1 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

18.0 LIMITATION OF LIABILITY

18.1 This Agreement has been entered into by the Trustee solely in its capacity as trustee of the Recipient and is not binding on the Trustee in any other capacity, whether in tort, contract or otherwise. **The Beneficiaries of the Recipient are not subject to any liability in respect of the Recipient.** Resort may not be had to, nor recourse or satisfaction be sought from, the private property of the Trustee (whether owned by its in its personal capacity or in any other capacity other than in its capacity as Trustee of the Recipient), its directors, officers, employees, or agents, or the private property of any Beneficiary, and resort will be had solely to the property of the Recipient held in trust by the Trustee for the payment, performance or satisfaction of any liability or obligation of the Recipient or the Trustee under this Agreement. However, the foregoing limitations in this section shall not apply where the Trustee has demonstrated gross negligence, bad faith, fraud or wilful misconduct.

19.0 GOVERNING LAW

19.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

20.0 FURTHER ASSURANCES

20.1 Agreement into Effect. The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

20.2 Declaration of Trust. The Trustee covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not be unreasonably withheld or delayed.

21.0 JOINT AND SEVERAL LIABILITY

21.1 Joint and Several Liability. Without limiting and subject to section 18.1 and the Declaration of Trust, if the Recipient is comprised of more than one entity, all such entities will be jointly and

severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

22.0 RIGHTS AND REMEDIES CUMULATIVE

22.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

23.0 ACKNOWLEDGEMENT OF OTHER LEGISLATION AND DIRECTIVES

23.1 Recipient Acknowledges. The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the PSSDA, and the *Auditor General Act* (Ontario).

24.0 SURVIVAL

24.1 Survival. The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0 and any other applicable definitions, section, 4.5, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the Province), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8.0, Article 12.0, Article 14.0, Article 16.0, Article 17.0, Article 19.0, Article 20.0, Article 21.0 and Article 24.0.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"

PROJECT SPECIFIC INFORMATION

Maximum Funds	$100 million
Expiration Date	Later of [April 30, 2019] and the Final Distribution Date (as defined in the Declaration of Trust)
Contact information for the purposes of Notice to the Province	**Attention: Usman Syed** **Position: Director** **Address: 77 Grenville St, Toronto, Ontario, M7A 2C1** **Fax: 416-325-6651** **Email: Usman.Syed@ontario.ca**
Contact information for the purposes of Notice to the Recipient	**Attention:** **Position:** **Address:** **Email:**
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	**Attention:** **Position:** **Address:** **Email:**

SCHEDULE "C"

PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.

2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.

3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).

4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

SCHEDULE "D"

Recipient's Budget

1. It is expected that the administrative expenses of the Fund, including any administrative expenses of the Recipient (or any administrative services agents or other agents retained by the Recipient), relating to the establishment of the Affordability Fund Trust and satisfying the Requirements (as defined in Schedule "C") and any expenses related to the operation of the Trust and the execution of the Project (including any reimbursable expenses incurred by any Administrative Services Agent (as such terms are defined in the Declaration of Trust), will be no greater than 10 percent of the total Project budget.

2. The only expenditures incurred by the Recipient that are eligible for reimbursement are actual (excluding HST) administrative overhead expenses incurred by or on behalf of the Recipient that directly related to the Recipient or the establishment of the Affordability Fund Trust.

4. Any expenses that have been or may be reimbursed by other parties should not be reimbursed by the Fund.

5. It is expected any travel, meals and hospitality expenses by the Recipient will be consistent with the Province's Travel, Meal and Hospitality Expenses Directive. For purposes of funding entities receiving funding from the Recipient, the following would not be considered eligible claims:

    - Alcohol
    - First-Class travel
    - Meals, snacks and beverages
    - Gratuities
    - Laundry or dry cleaning
    - Valet services
    - Dependent care
    - Home management
    - Personal telephone calls

6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive.

SCHEDULE "E"

PAYMENT PLAN

PAYMENT DATE	MAXIMUM FUNDS TO BE DISBURSED BY THE PROVINCE
Within 7 days of signing the Agreement	$ 100,000,000[1]

[1] **Investment income and proceeds of the Funds are to be applied for the Purpose in accordance with the Declaration of Trust.**

SCHEDULE "F"

REPORTING

From and following the Original Trustee Replacement Date, Reports[2] will be [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding and address the following:

- Quarterly Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Quarterly Reports would include details respecting:
    - Amounts disbursed by the Recipient in the previous quarter. It is expected that this information would be provided at the Electricity Distributor level and in the aggregate.
    - Total Affordability Fund investment income earned and accrued to date.
    - Key activities and achievements from the quarter, including the number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
    - Any challenges or modifications to the application, funding, or eligibility processes/rules of the Recipient.
    - Key activities planned for the upcoming quarter.
    - Details of any situation that a reasonable person might interpret as an actual, potential or perceived conflict of interest.
- Annual Reports would include a report back on the Trustee-developed performance management criteria. Initially, such Annual Report would include details respecting:

[2] NTD: Confirm and conform frequency references.

- A description of an Electricity Distributor's application process and the criteria used by the Recipient to distribute funds.
- Any challenges identified by the Recipient or any Administrative Services Agent in achieving the Purpose and proposed solutions, if applicable.
- Lesson learned.
- Electricity Distributor and customer feedback.
- Amounts distributed to Beneficiaries or otherwise disbursed by the Recipient in the previous year. It is expected that this information will be provided by each Electricity Distributor.
- Key activities and achievements from each quarter being reported, including number of participant households per Electricity Distributor, average participant incentive cost per Electricity Distributor, and uptake of energy efficiency measures per Electricity Distributor.
- Total Affordability Fund interest earned and accrued to date.

As part of an Annual Report, the Recipient would also provide the Province with an audited financial statement for the previous year.

ANNEX A

Principles

[Insert from Principles Annex once settled in the Declaration of Trust]

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Control Assessment_Affordability Fund Mar 20 np.pdf

Draft Control Assessment of Affordability Fund Trust (Rev. Mar 20, 2017)
for Inclusion in the Government's Reporting Entity

ISSUE

Would the Ministry of Energy's proposed Affordability Fund Trust be assessed as controlled under Public Sector Accounting Board (PSAB) standard on the Government Reporting Entity (PS 1300) and therefore be included in the Province's consolidated financial statements?

RECOMMENDATION

Conclusion outstanding pending confirmation of accuracy of extracts/references in Appendix 1.

Elements of the Trust Declaration and Transfer Payment Agreement have been assessed by OPCD as aligned with both OPCD's One-Time Guidance on Transfers as well as OPCD's Trust Guidance document, both of which are attached as Appendices to this analysis. Both of these documents have been reviewed and concurred to with the Office of the Auditor General in the past and have been important references in ensuring that the public interest will continue to be served through the establishment and administration of the Affordability Fund Trust.

BACKGROUND

The Ministry of Energy plans to transfer $100M to a Trust in relation to a new Affordability Fund for the purpose of providing energy efficiency measures to electricity customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP), delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

The Affordability Fund would be available to LDCs who would identify eligible customers in accordance with criteria established by the Trustees and could include customers in frequent arrears or facing disconnection. Priority would be given to homes primarily heated by electricity.

In order to establish the Fund, the Ministry of Energy plans to enter in a Trust Declaration and a Transfer Payment Agreement (TPA) with a non-controlled Trustee (Computershare) which will shortly thereafter be replaced by an independent Board of Trustees based on the advice of an independent Advisory Committee. The Ministry of Energy anticipates entering into the Trust Declaration and TPA with Computershare and flowing the approved funding prior to March 31st.

The Board is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "**Selection Factors**"):
  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors [not under the control of the Government of Ontario], two individuals will be representatives from

separate social services agencies [not under the control of the Government of Ontario] and one individual member, who will be anon-voting member, will be an employee or representative of the Government of Ontario; and
d) it is expected that representation by the Government of Ontario will be non-controlling. The Board of Trustees, once selected is expected to include 6 persons (five voting and one non-voting) of individuals from among those individuals who have been recommended for appointment to the Board of Trustees by the Advisory Committee.

The Trustees will have the discretion to hire Hydro One or other entities as service providers to assist with administering the Fund, using Administrative Services Agreements to clearly document services and expectations. The Trust would distribute funds to LDCs across the province (including Hydro One) at the discretion of the Trustees.

The draft TPA includes terms which allow for unfettered control by the Trust to operate in the best interest of the beneficiaries, including making decisions on the administration and distribution of funds to LDCs across the province. The Trustees are expected to conduct themselves in good faith and give regard to guiding principles established by the Province in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province, including Hydro One.

The Trust Declaration will be subject to further modification based on agreement by both parties, but not unilaterally by either party. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The non-compulsory **Principles** of the Fund will be clearly articulated in the Trust Declaration and the TPA. Language in the documents will clearly reflect that the principles are not mandatory requirements.

In addition, a **Permitted Delegation Annex** will be included which refers to expectation between the parties that the Trust would plan to rely on LDCs to assist with achieving its purpose, while maintaining unfettered discretion and power to (a) appoint, employ or retain Administrative Services Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend Administrative Services Agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned Administrative Services Agreements, the Permitted Delegation Annex also outlines certain terms and conditions that the Trustees might consider for inclusion in the services agreements, recognizing that the ultimate agreements would be subject to the acceptance and agreement of the applicable Electricity Distributor counterparty. While the Annex appears quite specific in nature, it is non-mandatory and intended as guidance only which may be helpful as the Trust seeks to commence discussions with LDCs in the spirit of serving the interests of the primary beneficiaries. As noted, the Trustees are not bound to use the guidance.

Commented [NP1]: But there is a suggestion that they would as referenced in the audit clause which states that the scope of the audit would include review/validation of processes and control related to LDCs.

There is also a requirement under the Declaration that any changes would only be possible if they are in agreement with the Principles.

CONTROL ANALYSIS

In accordance with PSAB, "the Government Reporting Entity should comprise the organizations that are controlled by the government" (PS 1300.07). PSAB defines control as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organizations activities" (PS 1300.08). Benefits may be financial or non-financial, for example, the government may require the organization to cooperate in pursuing the government's public policy objectives.

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PSAB's "indicators of control" are the relevant guidance in determining the degree of control for inclusion of the Affordability Fund Trust in the Government Reporting Entity (GRE). In applying this guidance, it is necessary to determine the substance of the relationship between a government and an organization in addition to its legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. In addition to PS 1300, consideration is also given the Trust Guidance and One-Time Transfer Guidance developed by OPCD in conjunction with the Office of the Auditor General which are attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the **preponderance of evidence** that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1) Draft Trust Declaration (March 20 5:30 pm), including related schedules (Principles Annex, Delegations Annex)
2) Draft Transfer Payment Agreement (March 20 5:30 pm)
3) OPCD Trust Guidance
4) OPCD Guidance on One-Time Transfers

Appendix I shows the detailed analysis of the PSAB indicators of control. Based on this assessment and the preponderance of evidence, informed by a review of the wording in the draft Trust Declaration and Transfer Payment Agreement, there are a number of features of the proposed arrangements which may be pertinent in assessing whether, an overall basis, the Affordability Fund Trust might be controlled by the Province as at March 31, 2017.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (i.e., more persuasive) indicators (CICA PS 1300.18):		
1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. The Declaration describes the process expected to be used to establish the Replacement Board. The government will not control the Original Trustee, the Advisory Committee, or the appointment of the Replacement Board of Trustees.	X
2. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government will not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government will not have any exposure to losses of the Trust. In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a "non-controlled trust" (as that term is given meaning in - applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a "non-controlled trust", then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the	• Neither in the Trust Declaration or the TPA can the government unilaterally direct the financial and operating policies of the Trust. Any Trustee initiated changes to the Declaration or TPA would need to be consistent with the Principles Annex. • • The Trust Declaration and TPA do not interfere with the	

Commented [NP2]: Check against Mar 20 (proviso)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
organization	unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. The 'Principles Annex' describes non-mandatory guiding principles to be considered by the Trustees in applying their discretion in relation to administration of the Trust. The Annex clearly indicates that the Trustees shall **only have regard to** the principles but that they shall not be specifically bound by the listed principles. Furthermore, the declaration and TPA are subject to change. Under the Declaration of Trust, section 1.2 Definitions , "**Declaration of Trust**" means the declaration of trust made as of March [□], 2017, under whi o the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province. • The Trust Declaration also includes a schedule which lists 'suggested' initial eligible measures for consideration by the Trustees, and elements for consideration in the Administrative Services Agreements that the Trust may chose to enter into with LDCs. • The Trust Declaration does not direct a specific governance structure, but rather includes the following reference under **2.3 Governance. The Recipient represents, warrants and covenants that it has, and will maintain, in writing for the period during which the Agreement is in effect:** (a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in furtherance of the Purpose; and (b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0	✓
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust, including the power to redirect distribution of remaining funds and seek remediation for any mis-used funds. **SECTION 7 - TERMINATION** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section	

Commented [NP3]: Not mandatory (will AG have concerns with level of specificity)

Commented [NP4]: XXX Mar 20 – no reference to timeliness or not unreasonably withholding (no proviso) see sec. 4.2

Commented [NP5]: Not mandatory (will AG have concerns with level of specificity)

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	3.3. Despite the foregoing, the Trust will only be terminated and wound up date after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date** If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. Right to assets under default (material breach provisions only, and after notice period). **11EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: (a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; (c) it is [determined][manifestly demonstrated by the Province] that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; (d) an insolvency event shall have occurred and be continuing with respect to the Recipient.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	11.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of Default during a specified Notice Period; No right to access assets following Final Date of Distribution: **3.3 Distributions to Residual Beneficiaries** Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on **[Identify criteria that will narrow the scope to charities to those having an energy/social focus]**those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3,7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries. The government also cannot unilaterally extend the term of the agreement. Rather, the term of the Agreement can only be extended by further agreement between the Parties. **3.3 Extension of the Declaration of Trust.** If the Province determines that an extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient, so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.	

DRAFT

INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process Replacement of the Original Trustee is described in section 5.7 of the Trust Declaration which describes a logical process to select subsequent trustees but which does not result in a Trust that will be controlled by the government (as above). Although the Ministry of Energy provided input to the selection of the Advisory Committee with will help the Trustee to select the Replacement Trustees by nominating candidates based on the selection criteria, the Advisory Committee is not the governing body. As at March 31st, the Original Trustee is the governing body and although selection thereof may have been influenced by the government, the Trust Declaration and Transfer Payment Agreement have been drafted to reflect a non-controlling relationship. PSAS also includes the following guidance w.r.t. government involvement in appointing governing bodies: 20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization In addition, section 1.1 (interpretations) of the TPA includes the following: it is intended that the transfer of the Funds to the Recipient will be a transfer made to a “non-controlled trust” (as that term is given meaning in • applicable to the accounting rules and principles applicable to the Province as of the date of the Agreement), and so if a term or condition of the Agreement is determined to conflict with the requirements applicable to the Province recording the transfers to the Recipient of Funds contemplated hereunder as an expense incurred by the Province on the date of the transfer of Funds under the Agreement otherwise in connection with activities undertaken by the Province with such a “non-controlled trust”, then such term or condition shall be given a meaning and shall have an effect insofar as it is possible to interpret such term or condition in a manner that eliminates such conflict while preserving the other provisions of the Agreement and furthering the Purpose.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Province established the Trust and has provided Principles which help to guide the Trust.	✓
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention for province to manage or influence the Trust on a line by line basis.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration references: (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than [one year] after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). 4.2 (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10.Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources (Suggestions for Admin Services Agreements and Principles in Trust docs are not mandatory. Replacement Board of Trustees can initiate changes which can reasonably be anticipated to be accepted if not contradictory to the Principles. References to provinces procurement directive and meals, entertaining and hospitalitiy directive only state expectation that Trust's processes would align with the principles.)	**NO UNILATERAL GOVT POWER TO MAKE CHANGES**: Trustees would have power to consider change in the policies in the Trust Declaration and/or modify the TPA, subject to provincial approval. Declaration: 1.1 (y) "'***Transfer Payment Agreement***" means the transfer payment agreement dated as of March •, 2017 between the Trustee and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy, as such agreement may be amended, restated, supplemented or otherwise modified by the further agreement of the parties thereto from time to time. **4.2Specifically Enumerated Powers** The Trustee shall have the following specific powers and authorities: (c) ***Transfer Payment Agreement.*** The Trustee shall have the power to enter into, amend, supplement, modify and perform its obligation under the Transfer Payment Agreement. ***NO GOVT CONTROL OVER OPERATING OR FINANCIAL POLICIES*** ***j)Power to Pay Trustee's Fees*** Trustees have general regard to sorts of limitations as are set forth in the "Travel, Meal and Hospitality Expenses Directive of the Province" **5.8 Rules and Procedures of the Board of Trustees** (d) ***Initial Requirements***. As soon as practicable and in any event no later than one month following the Original Trustee Replacement Date, the Board of Trustees shall meet to take such decisions and actions as they deem necessary to ensure the proper management and administration of the Trust. The date (and location if in person) of the initial meeting shall be determined by a majority of the Board of Trustees. 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

Commented [NP6]: Inconsistent w.r.t expectation of agreement between the two parties

Commented [NP7]: Supposed to say 'is expected that)

Commented [NP8]: Terminology

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	(a) act prudently and in furtherance of the Purpose; (b) report annually the results of its activities for information purposes to the Province in connection with the Program; (c) comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; (d) return of Assets that have not been distributed if it is [determined][by the Province] that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose.] The Trust Declaration includes a Permitted Delegation Annex, which describes administratively, how the Trust might consider delegating its powers and duties to LDCs (non-controlled by the province) and satisfy the Standard of Care required under the Trust Declaration. Certain sections of the Delegation Annex go beyond general accountability provisions and suggest very specific requirements/expectations in relation to the Trustee's arrangements with LDCs and LDCs own administration of Fund monies. As currently worded, the Delegations Annex, when taken together with the Principles Annex and Listing of Eligible Measures, may be assessed substantively as 'controlling' the trust, regardless of wording which refers to the exercise of Trustee discretion. **5.1RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. .	

Commented [NP9]: Aligned with OPCD guidance on One-time Transfers and Trust Guidance (previously discussed and agreed to by OAG)

Commented [NP10]: Some audit risk

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	PRINCIPLES ANNEX The Trustee shall have regard to **[, but shall not be specifically bound by,]** the following principles in applying its discretion in relation to the administration of the Trust. **DECLARATION OF TRUST** **6.1 Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof. provided, however, that no amendment shall conflict with the principles set forth in the Principles Annex or as to the scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.] 6. In the event that the Recipient performs any procurements, it is expected that all procurements will reflect the principles of Ontario's Public Service Procurement Directive. From and following the Original Trustee Replacement Date, Reports will be provided [quarterly] on the basis of the government's fiscal year starting at the execution of this Agreement and continuing until conclusion of the Agreement. Annual Reports will be on a fiscal basis starting at the execution of this Agreement and continuing until conclusion of the Agreement. Quarterly Reports and Annual Reports would be expected to be submitted to the Province within one month following the end of the reporting period that they represent. The Province expects that these Reports would be prepared to demonstrate the impact of the Province's funding. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative services Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Conduct of the Trust and the Program** 4.1 It is expected that administrative expenses of the Board of Trustees and its members, including any expenses relating to the Trust, to the establishment of the [Trust]and any expenses related to the implementation and operation of the Program, including by or through Electricity Distributors and other relevant entities, will be recognized and subject to reimbursement on a basis that is	

Commented [NP11]: Conflicting with suggestion that the Principles are guidelines only?

Commented [NP12]: No accounting issue, but not sure that this was included in the appendix?

Commented [NP13]: For information purposes, in accordance with OPCD TP Guidance and Trust Guidance.

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	substantially consistent the principles in the Travel, Meal and Hospitality Expenses Directive, the current form of which attached as Schedule B to this Principles Annex. Permitted Delegation Annex (not mandatory) 4. Accordingly, and without limiting the Trustee's right to delegate under the Declaration and its other rights, powers and discretion as Trustee, the Trustee will be permitted to, and is expected to seek to, enter into Administrative Services Agreements with Electricity Distributors in order to further the Purpose. Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such Administrative Services Agreements, it is expected that such Administrative Services Agreements will include customary terms and conditions for an administrative services arrangement of this type and, in addition, would (subject to the acceptance and agreement of the applicable Electricity Distributor counterparty) address certain aspects.	

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Appendix II

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s:t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix III

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

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SCHEDULE "C"
PROJECT

For the purposes of this Agreement, the "Project" is the distribution of the Funds in accordance with the Declaration of Trust.

It is intended the Project will be undertaken by the Recipient in furtherance of the Purpose and in accordance with the Declaration of Trust. In this regard, it is expected that the Recipient will undertake the Program having regard to the Budget and the Principles set forth in Annex A.

The following are the Provinces expectations regarding the circumstances in which the Recipient will begin to distribute any Funds to any Beneficiary.

1. The Original Trustee Replacement Date (as defined in the Declaration of Trust) will have occurred.
2. An administrative services agreement will have been entered into between the Recipient and an Administrative Services Agent providing for the administrative services necessary for the Recipient to perform its obligations herein and execute the Project.
3. Administrative procedures will have been developed and implemented under which Electricity Distributors (as defined in the Declaration of Trust) will be invited to assist with (a) the identification and selection of Primary Beneficiaries under the Declaration of Trust, (b) the determination of the amount of Funds to be distributed to particular Primary Beneficiaries, and (c) the distribution of Funds to or for the benefit of such Primary Beneficiaries (in each case substantially on the basis contemplated in the Permitted Delegations Annex).
4. The Recipient will have obtained commercial general liability insurance from insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, that in the opinion of the Recipient a prudent person similar to the Recipient would maintain, and having an inclusive limit of not less than $2,000,000 per occurrence and providing for contractual liability coverage. If requested, the Recipient will provide the Province (for its information purposes) with copies of the certificates of insurance and policies for such insurance coverage.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient will confirm to the Province once such matters have been completed.

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5.7 Replacement of the Original Trustee

As soon as practicable and in any event on or prior to March 31, 2017, the Original Trustee shall appoint the Persons identified by the Trustee Replacement Annex to comprise the Advisory Committee contemplated therein (once constituted, the "**Advisory Committee**"). As soon as practicable thereafter, the Original Trustee shall request that the Advisory Committee make recommendations with respect to the composition of the "Board of Trustees", as contemplated by the Trustee Replacement Annex. The Trustee shall have no duty or obligation to investigate the basis for any of the Advisory Committee's recommendations and may rely on such recommendations without any duty of enquiry, supervision or oversight with respect to the activities and decision-making processes adopted by the Advisory Committee in its discretion, in full satisfaction of the Original Trustee's Standard of Care with respect to such matters hereunder. Except if the Original Trustee determines that the individuals recommended by the Advisory Committee to become members of such Board of Trustees are disqualified from so acting on the basis of manifest non-compliance with the "Selection Factors" set forth in the Trustee Replacement Annex, the Original Trustee shall appoint, as members of the Board of Trustees, the [six] (five voting and one non-voting) individuals recommended for appointment to the Board of Trustees by the Advisory Committee. Upon the appointment of such [six] individuals pursuant to this provision and their agreement to act as members of the Board of Trustees, the Original Trustee shall be deemed to have resigned and shall cease to be a trustee (such resignation occurring on the "**Original Trustee Replacement Date**").

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Updated Public Accounts Technical Briefing .pdf

From:	Hosick, Sarah (TBS)
To:	Kim Marshall
Cc:	Donaldson, Mark (TBS); Veinot, Cindy (TBS)
Subject:	Updated Public Accounts Technical Briefing
Date:	September 1, 2017 5:13:10 PM
Attachments:	Public Accounts Technical Briefing 201617_Sept 1_Draft_v3.pptx

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Hi Kim

Please see attached for an updated technical briefing deck that incorporates the comments from the call today, as well as some edits from our communications branch.

One point I'd like to clarify with you, on slide 12 should it read "IESO is a party to agreements" plural or should it read "IESO is party to an agreement" singular?

Pw to follow in separate email. Happy to take any other comments as well.

Have a good long weekend!

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

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Public Accounts Technical Briefing 201617_Sep.pdf

2016-17 Public Accounts

Technical Briefing

September 7, 2017

CONFIDENTIAL DRAFT

Purpose of today's briefing

1. Provide an overview of the results for fiscal 2016-17
2. Highlight the changes made in the 2016-17 financial statements:
   a) Accounting for net pension assets of jointly sponsored pension plans
   b) Accounting for the Independent Electricity System Operator (IESO)
   c) Accounting for hospitals, school boards and colleges
   d) Accounting for energy sector government business enterprises (GBEs)

Preparation of the Financial Statements

- The consolidated financial statements are prepared by the Government of Ontario in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB).
- PSAB independently establishes accounting standards for the public sector in Canada.
- The objective of PSAB standards is to meet the needs of users of financial statements by providing the information needed for accountability and decision making.
- PSAB standards specify how transactions and other events are to be recognized, measured, presented and disclosed in a public sector entity's financial statements.
- PSAB recognizes that their standards cannot address every potential situation, and that it may be necessary to refer to other sources of guidance.
    - *No rule of general application can be phrased to suit all circumstances or combinations of circumstances that may arise. As a result, matters may arise that are not specifically addressed in the primary sources of GAAP. It is necessary to refer to other sources when the primary sources do not deal with the accounting and reporting in financial statements of transactions or events that a public sector reporting entity encounters, or when additional guidance is needed to apply a primary source to specific circumstances. (Section PS 1150.07 from the PSA Handbook)*

Ontario

Summary 2016-17 Results

2016-17 Actual Results					
$ Billions	**2016-17 Budget[1]**	**2016-17 Actual**	**2015-16 Actual[2]**	**Change from Budget**	**% Change**
Revenues	138.5	**140.7**	136.1	2.2	1.6%
Expenses	141.8	**141.7**	139.7	(0.1)	-0.1%
Reserve	1.0	**-**	-	(1.0)	
Annual Deficit	(4.3)	**(1.0)**	(3.5)	3.3	-76.7%
Net Debt		**(301.6)**	(295.4)		
Accumulated Deficit		**(193.5)**	(192.0)		

[1] 2016-17 Budget has been reclassified to reflect the change in presentation for third party revenues of hospitals, colleges and school boards (no change to deficit)
[2] 2015-16 Actual has been restated to reverse the impact of regulated accounting for pensions

Ontario

2016-17 Highlights

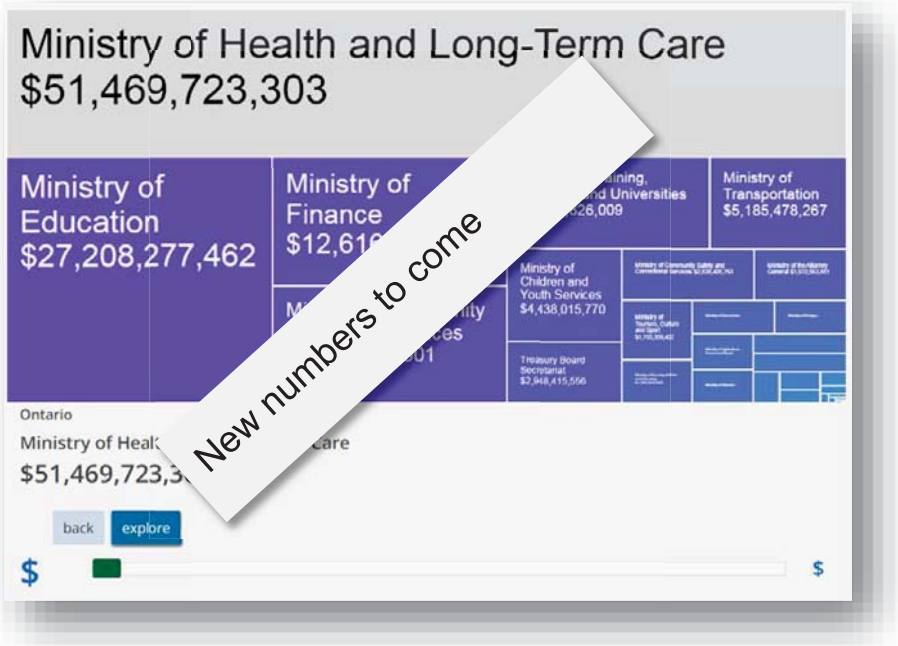
- The 2016-17 Public Accounts of Ontario show that Ontario's deficit is $991 million. Ontario has beaten its deficit target eight years in a row.
- The deficit is $3.3 billion lower than projected in the 2016 Budget and $0.5 billion lower than the interim projection in the 2017 Ontario Budget. This is a result of growth in revenue that exceeded growth in program expense, and lower than forecast interest on debt.
- Ontario's real gross domestic product (GDP) was 2.7%, up from 2.2% in the 2016 Budget. Over the last three years, Ontario's GDP growth has outpaced that of all other G7 countries.
- Net debt-to-GDP continues to be forecasted lower than expected for 2016-17 at 37.8%, an improvement over the 2016 Budget of 39.6%.

Ontario

2016-17 Highlights

- Other highlights include:
  - Total revenue of $140.7 billion, up $2.2 billion from the 2016 Budget
  - Total spending of $141.7 billion, down $0.1 billion from the 2016 Budget

- Visit **Ontario.ca/publicaccounts** for more highlights and digital tools that help make Ontario's finances easier to understand, access and use.



Ontario

Accounting Changes for 2016-17

- The Province adopted several new accounting changes for the 2016-17 Public Accounts to better reflect the financial position and activities of the government during the fiscal year
- These changes included:
  - Accounting for net pension assets of jointly sponsored pension plans
  - Accounting for the Independent Electricity System Operator (IESO)
  - Accounting for hospitals, school boards and colleges
  - Accounting for energy sector government business enterprises (GBEs)

Accounting for Net Pension Assets of Jointly Sponsored Pension Plans

- Ontario Public Service Employee's Union Pension Plan (OPSEUPP) and Ontario Teachers' Pension Plan (OTPP) are jointly sponsored pension plans (JSPPs) where the Government of Ontario is a co-sponsor.
- The plans are funded on a 50/50 basis, co-managed by the sponsors, and decisions regarding benefits and contributions require negotiation and agreement between them.
  - On June 12, 2017, the co-sponsors of OTPP (Ontario Teachers Federation and the Government) announced a 1.1% reduction in contributions effective January 1, 2018
- Under PSAB standards, an asset arises when the government's total contributions to a plan, including interest earned thereon, are greater than the pension expense recognized since the start of the plan.
- Since 2001-02, the Province's share of pension assets reflected on the audited consolidated financial statements of the Province has been based on a policy considered to be consistent with PSAB standards related to accounting for retirement benefits. The standards have not changed since their issuance in 2001.
- In 2016, the government passed a time-limited regulation to require the full write-off of the net assets of both of these plans for the 2015-16 Public Accounts.

Ontario

Office of the Auditor General's Position – Pension Accounting

- A qualified opinion was issued by the Office of the Auditor General on the 2016-17 consolidated financial statements regarding the Province's accounting for the net pension assets of OTPP and OPSEUPP and notes:
  - a full valuation allowance should have been recorded in 2016-17 (and prior years) to reduce the net pension assets of OTPP and OPSEUPP to NIL,
  - the Government does not have the unilateral right to use this asset because its ability to reduce future minimum contributions or withdraw any pension plan surplus is subject to agreement with the respective pension plan's joint sponsors, and
  - Canadian Public Sector Accounting Standards require the Government to record a valuation allowance against this asset.

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Province's Position – Pension Accounting

- Based on professional staff's interpretation of PSAB standards, the government believes that pension assets for OPSEUPP and OTPP should be reported in order to fairly present the Province's financial position.
- The Province has shared control over the pension plan and the existing agreements in place between the sponsors support the recognition of the pension asset.
- The professional staff does not believe that the Government has the right to withdraw any surplus from the plan, and has supported the value of the pension asset solely on the basis of being able to reduce contributions in the future.
- The Province has recorded the pension assets for OTPP and OPSEUPP in its 2016-17 consolidated financial statements and has restated the 2015-16 consolidated financial statements to recognize the pension assets.
- With respect to the Healthcare of Ontario Pension Plan (HOOPP) and Colleges of Applied Arts and Technology Pension Plan (CAATPP), based on the difference in governance structure between these plans and OTPP and OPSEUPP, the Province has recorded a valuation allowance for CAATPP in the year (amount is not material). The HOOPP plan is not in a net asset position for accounting purposes at March 31, 2017.

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Province's Position – Pension Accounting

- The professional staff's interpretation of PSAB standards is supported by its own research and analysis as well as:
  - The report of the Pension Asset Expert Advisory Panel (https://www.ontario.ca/page/pension-asset-expert-advisory-panel-report) released on February 13, 2017 stating that the Government should record an asset for its share of the surplus reported in the accounting valuations for each plan and that no valuation allowance is required.
  - An opinion from Deloitte LLP dated October 2, 2016 on OTPP, a summary of which is included in Appendix A, supporting the ability to recognize a pension asset in the absence of having a unilateral right to reduce contributions to the plan.
  - Analysis completed by EY as to whether any valuation allowance is required to be recorded for OTPP or OPSEUPP as of March 31, 2017. EY confirmed no valuation allowance was required for either plan.

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Accounting for Independent Electricity System Operator and Market Accounts

- Independent Electricity System Operator (IESO) is a not-for-profit, non-taxable corporation established pursuant to Part II of the *Electricity Act, 1998*.
- IESO prepares its financial statements in accordance with PSAB standards.
- IESO's financial statements are audited by KPMG LLP, which issued an unqualified opinion on the December 31, 2016 financial statements.
- IESO is a party to agreements with market participants for which are there are amounts due *to* the entities that provide electricity to the market (e.g. power generators) and due *from* those who consume electricity (e.g. local distribution companies on behalf of their consumers).
- In 2016, IESO changed the accounting for the market accounts, recognizing the amounts to be settled as assets and liabilities, equal in amount. In prior years, these amounts were not reflected in the financial statements of IESO.
- IESO made the change to be better reflect its' administration of $17 billion in amounts due to and from the market participants.
- This change has no impact to the province's annual deficit, net debt or accumulated deficit.

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Accounting for Independent Electricity System Operator and Market Accounts

- This accounting is consistent with the presentation used previously by the Ontario Power Authority (which was merged with the IESO on January 1, 2015) in its financial statements, which was not subject to qualification from the Office of the Auditor General at that time.
- Additional background on IESO:
  - On January 1, 2015, IESO was amalgamated with Ontario Power Authority (OPA) and continued as IESO.
  - Prior to the amalgamation, OPA prepared its financial statements in accordance with PSAB standards.
  - OPA's last financial statements prior to amalgamation were audited by KPMG LLP, which issued an unqualified opinion on the December 31, 2014 financial statements.
  - OPA's audited financial statements included a segment of the market accounts.
- The Province consolidates the financial statements of the IESO (and the OPA until it amalgamated with the IESO)

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Office of the Auditor General's Position – IESO Market Accounts

- A qualified opinion was issued by the Office of the Auditor General on the 2016-17 consolidated financial statements regarding the change in Independent Electricity System Operator's accounting for the "market accounts" noting:
  - the market accounts are not assets and liabilities of the Province, and
  - the Government has no access or discretion to use the market account assets for their own benefit, nor does the Government have an obligation to settle the market account liabilities in the event of default by market participants.

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Province's Position – IESO Market Accounts

- Based on professional staff's interpretation of PSAB standards, the government believes that reporting the IESO's market accounts in the consolidated financial statements of Province is more transparent accounting.
- The IESO is a party to the contracts with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO.
- For example:
  - Ontario Power Generation has a receivable from IESO recorded on its financial statements related to power generated, and historically, IESO did not have a payable recorded to Ontario Power Generation – now it does
  - Hydro One has a payable to IESO recorded on its financial statements related to power purchases, and historically, IESO did not have a receivable recorded from Hydro One – now it does
- The amounts due from market participants meet the definition of an asset and the amounts due to market participants meet the definition of a liability under PSAB standards.
- The IESO reviewed the accounting for eight other independent system operators in North America, and all but one recognize market accounts in the financial statements.
- IESO management, their Audit Committee, their Board of Directors, their external auditor and the Office of the Provincial Controller support the change in accounting.

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Accounting for Hospitals, Colleges and School Boards

- 2016-17 Public Accounts present third-party revenues for hospitals, school boards and colleges with provincial revenue.
- In prior years, these revenues were netted against the expenses of the respective sectors (health, education, post-secondary).
- This is a change in presentation only.
- The changes increases total revenues and expenses by approximately $8 billion.
- There is no impact to the Province's deficit, net debt or accumulated deficit.
- This change is consistent with PSAB standards and the reporting practices of other senior Canadian governments.
- This change was adopted in response to recommendations by the Office of the Auditor General.

Accounting for Energy Sector Government Business Enterprises

- The 2016-17 Public Accounts include the financial results of Ontario Power Generation (OPG) and Hydro One using International Financial Reporting Standards (IFRS).
- These two government business enterprises currently report their stand-alone financial results using Generally Accepted Accounting Principles in the United States (US GAAP).
- In prior years, the reported results of OPG and Hydro One were included in the results of the Province based on US GAAP.
- This change does not have a material impact on this year's Public Accounts.
- The change to reporting under IFRS for OPG and Hydro One was recommended by the Office of the Auditor General.

Appendix A – Deloitte Summary of Accounting Opinion Issued on Pension Accounting

Deloitte was engaged to provide a report ("Deloitte Report") on the application of accounting standards by the Ontario Treasury Board Secretariat. Our report, which was issued on October 2, 2016, was prepared under professional standards for such reports set out by CPA Canada.

The subject of this report was the application of Public Sector Accounting Standards (PSAS), as established by CPA Canada, in the recognition of a pension asset in the Province of Ontario's financial statements. Pension accounting is subject to professional judgement and interpretation, and involves significant accounting estimates. The Deloitte Report focused on a specific aspect of this complex area as it relates to the Province of Ontario's accounting for the Ontario Teachers' Pension Plan (OTPP).

OTPP is a pension plan that is jointly sponsored by the Ontario government (or the Province) and the Ontario Teachers' Federation (OTF). Based on the Province's application of PSAS, OTPP is in a plan surplus position. We accepted this aspect of the Province's application of PSAS as a matter of fact in developing our report.

The Deloitte Report addressed the question of whether it was possible to record a pension asset related to the plan surplus in the Province's financial statements, given that the plan is jointly sponsored. We concluded that, based on the information provided to us by the Province and our professional judgement, that it was permissible under PSAS to record a pension plan asset, even though the Province's ability to benefit from any plan surplus, through future contribution reductions for example, would need to be negotiated with and agreed between the Province and OTF.

It is to be noted that even if a pension asset is recorded, PSAS would also require that consideration should be given to limiting the recorded amount of this pension asset to an amount that would be less than the calculated amount of the pension surplus. The Deloitte Report did not express a view on whether any limit to the recorded amount of the asset is needed in the case of the Province's accounting for the pension asset related to OTPP. Therefore, our report did not express a view on the amount of the pension asset that should be recorded in the Province's financial statements as at March 31, 2016 or at any other date.

URGENT - for your consideration.rtf

From: Petsche, Nadine (TBS) []
To: stephen.ashbourne@blakes.com [stephen.ashbourne@blakes.com]
CC: Schwab-Pflug, Emma (ENERGY) [Emma.Schwab-Pflug@ontario.ca]
Subject: URGENT - for your consideration
Date: Tuesday, March 21, 2017 19:57:58

Stephen,

Just going through the control analysis and I seem to be having a number of version control issues to deal with. In the meantime, I thought it would be best if I sent you a couple of impt items for consideration on the assumption that you might be further revising the docs. As noted in my earlier email, there remains a real risk that some of the current wording would reflect a 'veto' right by the gov't which would be akin to control. I am copying Emma on this note in case you need to seek Ministry concurrence on any of the edits. Nadine

Consider stating "Any Trustee initiated changes to the Trust Declaration would ARE EXPECTED TO BE consistent with the Principles Annex, although the Trustee may amend the Trust Declaration to, among other things, add to or reasonably MODIFY the principles set forth in the Principles

Trust Declaration:

Section 6.1 of the Trust Declaration states that, subject to the TPA, the Trustee shall have the power in its sole and absolute discretion to amend the Declaration [provided that ~~no~~ amendments are expected to be consistent with ~~shall conflict with~~ the principles set forth in the Principles Annex and to take into consideration the suggested scope or effect of the permitted delegations and activities of any Administrative Services Agent pursuant to the Permitted Delegations Annex.]

3.2Extension. The term of the Agreement may be extended by further agreement between the Parties.

3.3 Extension of the Declaration of Trust. ~~If the Province determines that an~~

~~extension of the Declaration of Trust (beyond the "Final Distribution Date" and time for termination, each as specified or determined thereunder) is consistent with and in furtherance of the Purpose and the Province's original intentions and expectations in establishing the Project, the Province may request that the Recipient extend the Declaration of Trust to a date specified by the Province in a Notice (such date not to be later than •), whereupon the Recipient,~~ Where the parties agree under 3.2, to an extension of the date, it is expected that ~~so long as the Trustee does not have a reasonable basis to believe that such an extension would be inconsistent with the Purpose or weaken the protections intended for the benefit of the Trustee pursuant to the Declaration of Trust, will~~ the Trust undertake such actions as it may consider to be necessary or appropriate to so extend the Declaration of Trust, including by amending the Declaration of Trust to provide for such an extension and to modify any other term or requirement as would be necessary or prudent to conform such term or requirement in light of such extension.

The Province recognizes that the foregoing may involve the Recipient entering into agreements as may be the Recipient considers to be necessary or expedient, including any required amendment or amendment and restatement of the Declaration of Trust. Funds may be expended to pay the expenses of the Trustee in completing these matters. The Recipient is requested to advise the Province through the quarterly report back process on the status of any activities involving the above suggested activities.

Use of Rate Regulated Accounting by OPG .rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
Subject: Use of Rate Regulated Accounting by OPG
Date: Wednesday, February 22, 2017 11:15:58
Attachment 1: Use of Rate Regulated Accounting by OPG - DonnHannbidge.doc

---

Michel/Kim,

Attached is the documentation I referred to on the call.

Regards,

Nadine

Use of Rate Regulated Accounting by OPG - DonnHannbidge.pdf

Use of Rate Regulated Accounting by OPG

There is currently no requirement under Canadian GAAP for a regulator to be considered independent in order for an entity to record regulatory assets or liabilities in its financial statements. OPG recently confirmed this with a staff member at the CICA. Even if there was a requirement for a regulator to be independent, such as under FAS 71 in the U.S., the OEB can be considered to be similar to cooperative rate regulated organizations in the U.S., which have their own governing bodies that are empowered by statute to establish rates that bind customers. Therefore, the OEB meets the criteria for recording regulatory assets under FAS 71.

In OPG's view, regulatory assets and liabilities meet the general definition of assets and liabilities in the CICA handbook, including access to control over the asset. It is important to note that the rate regulated assets on OPG's balance sheet arise from transactions between OPG and rate payers, not between OPG and the OEB. Therefore, the fact that the OEB may be a related party to OPG, is not relevant. It is also important to note that OPG has control over its regulatory assets, and if OPG was unable to recover its regulatory assets through approved rates, OPG's recourse would be to ratepayers, not to the OEB. The OEB would facilitate the recourse, but would not be the party that is held liable. Therefore, it its unlikely that the OEB has access to control over OPG's regulatory assets.

Based on a preliminary review of the Provincial Auditor's report of the Public Accounts of the Province from late 2008, OPG feels that similar arguments can be considered when assessing whether the Province can consolidate OPG's regulatory assets and liabilities in its financial statements. The Provincial Auditor has stated that regulatory assets and liabilities should be considered inter-company transactions due to the lack of independence of the regulator. As stated above, there is no requirement for independence under Canadian GAAP, and even if there was, OPG and the Province likely meet this criterion. In addition, regulatory assets likely meet the other criteria under PSAB for recognizing government assets. As stated above, OPG has access to control over its regulatory assets, and by virtue of the Province's 100% ownership of OPG, the Province also has access to control over these assets. The OEB, on the other hand, does not have access to control over these assets, suggesting that OPG's regulatory assets would not be considered inter-company transactions. Another criterion that has to be met in order to recognize a government asset is that the transaction or event giving rise to the government's control of the benefit has already occurred. The event that gives rise to the asset is the incurrence of a cost which the utility will be able to recover through regulated rates in the future. The event that gives rise to the asset is not the actual collection of cash, but rather the right to collect the cash. The likelihood of converting this right to actual collection of cash is assessed based on a long history of regulatory precedence and case law.

The final point to note is that the Provincial Auditor's report states that IFRS does not include provisions supporting rate regulated accounting. While this is true, Canadian utilities have concluded that most regulatory assets and liabilities would meet the conceptual framework to be recognized as "standard" assets or liabilities under IFRS. Furthermore, the International Accounting Standards Board recently issued an Exposure Draft that would permit the recognition of regulatory assets and liabilities under IFRS.

Use of Rate Regulated Accounting.doc.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: Use of Rate Regulated Accounting.doc
Date: Thursday, June 15, 2017 09:55:56
Attachment 1: Use of Rate Regulated Accounting.doc

Lee Anne,

Came across this as well. May be helpful as background. n

Use of Rate Regulated Accounting.pdf

Use of Rate Regulated Accounting by OPG

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V1.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: V1
Date: Friday, July 07, 2017 08:33:09
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V1 6-Jul-2017.docx

Hi Nadine,

The first part of the memo for review and discussion.

Regards,

Lee Anne

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

EY Tower, 100 Adelaide Street West, P.O. Box 1, Toronto, Ontario M5H 0B3, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

Fax: 416 943 3767 | EY/Comm: 1657762

This e-mail does not constitute an opinion on the application of generally accepted accounting principles, or any form of assurance on or concurrence with a specific entity's accounting matters, financial statements, any financial or other information or internal controls. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment a specific entity should select or adopt. This e-mail is the equivalent of an informal discussion and may not be shown, referenced or distributed to anyone outside the recipient's organization.

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image001.pdf

FHP Memo - Draft V1 6-Jul-2017.pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's electricity investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 15-17% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to provincial revenues.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The Province will recover the borrowed funds, including interest, from ratepayers over an estimated 18-year period starting in approximately 2028.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The forecasting process is highly complex and involves numerous estimates. As a result, differences arise between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to clear any such differences over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The Independent Electricity System Operator (IESO) is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, both buyers and sellers, but it does not buy or sell electricity itself.

It is the IESO that experiences and, therefore, is required to fund, any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO

is required to establish and maintain a variance account to track these differences (the original variance account). Cash shortfalls in the IESO arising from the original variance account are funded by XXX.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers will no longer be fully collected over a 12-month period.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP. Decisions regarding electricity generation in Ontario are not based solely on economics, they are influenced by environmental, social and political factors as well. When a generator invests in a less economic facility, the excess costs (including a reasonable rate of return thereon) are currently being recovered from consumers and paid to generators over a twenty year period.

Under the FHP, generators continue to be paid over a twenty year period, but the amounts are recovered from the consumers over a thirty year period. Deferring the recovery of these costs from the consumers on a long-term basis creates a significant cash shortfall in the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a separate variance account to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall.

OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis and eliminate any cash shortfall in the IESO. OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. Accordingly, the accounting for these entities in the GRE is as follows:

ENTITY	CLASSIFICATION	ACCOUNTING METHOD	GAAP
IESO	OGO	Consolidation	PSAS
OPG	GBE	Modified equity method	IFRS

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will be consolidated in the GRE on a line-by-line basis under PSAS.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities to be reflected in the financial statements. Under the new policy, the IESO's financial statements do not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but IFRS and both US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

- *a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;*
- *b) the entity has inventory risk before or after the customer order, during shipping or on return;*
- *c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and*
- *d) the entity bears the customer's credit risk for the amount receivable from the customer.*

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit. So, generally speaking, other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically identified as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically identified as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been recorded as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined under the FHP Act to be a regulatory asset.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, support its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in the financial statements of the IESO.

When the standalone financial statements of the IESO are considered in isolation, the impact of the conclusion reached on this issue is eliminated to the extent the regulatory asset has been sold to OPG Trust. The conclusion remains significant, however, due to its impact on the consolidated financial statements of the GRE, which is discussed in a later section.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board.

The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes.

In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following:

Chapter 9, Section 1.2.3
Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017*. 2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017*. 2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover costs. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

RRRP charges
The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge
This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge
When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) inherited $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. As with the other criteria, this will need to be continually evaluated throughout the recovery period.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting

policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;
b) the public sector entity can control the economic resource and access to the future economic benefits; and
c) the transaction or event giving rise to the public sector entity's control has already occurred.

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset

has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the

use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

The regulatory asset does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41-.42 on non-financial assets is less definitive, using words like “such as” and “normally”. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is

probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets.

Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

V2.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
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Subject: V2
Date: Monday, July 17, 2017 11:20:34
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V2 17-Jul-2017 .docx

V2 for review and discussion.

I had already updated the memo based on Nadine's comments and saved as V2 before receiving Cindy's comments. As a result, please note:

- All of Nadine's changes were accepted
- After accepting Nadine's changes, subsequent changes are blacklined
- Some of Cindy's review notes have been inserted under my name

Regards,

Lee Anne

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EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) ~~Fair Hydro Plan~~ component of the FHP on ~~the Province's~~ Ontario's consolidated financial ~~reports~~statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the ~~FHP model~~GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. ~~At this time, accounting standards, both domestically and internationally, continue to evolve.~~ This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

~~In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP).~~ The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 15-17% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.

Commented [LAP1]: This is my understanding after speaking to Jeannette, but it would be good to reconfirm.

Commented [LAP2]: To confirm/correct.

3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates~~, including interest and other costs from ratepayers~~ over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting ~~forecasting~~ process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to ~~allow for recovery of~~settle any such ~~differences~~ variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The ~~Independent Electricity System Operator (~~IESO~~)~~ is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, ~~both buyers and sellers, but it does not buy or sell electricity itself~~as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting

process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent ~~recovery from~~settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period, but over ~~the~~ a longer period defined by legislation.

Commented [LAP3]: Does the legislation define a specific period?

~~As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying (clean energy) electricity, however, is greater than the MCP. From a government policy perspective, it is understood that d~~Decisions ~~of what is in the public interest regarding electricity generation in Ontario are not based solely on economics, but rather they are also influenced by environmental, social and political factors, as well. When the costs associated with generation of a clean energy generator invests in~~are ~~a~~relatively~~are relatively less economic, facility, the excess costs (including a reasonable rate of return thereon) are currently being recovered from consumers and paid to generators over a the twenty year contract period (e.g. 20 years).~~

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a ~~longer~~ thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

~~Similar to the existing variance account which tracks the variance between price paid and recovered for the clean energy generation purchased by the IESO,~~ Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a ~~separate~~ variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

Commented [NPP4]: Confirm consistent with IESO analysis

The Province has requested that OPG administer the ~~GAC~~ deferral of the Global Adjustment under the FHP~~,~~ because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. To fulfill this role, OPG intends to establish a

Commented [LAP5]: To discuss.

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis~~, thus helping to~~ and eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Commented [LAP6]: Diagram to be added.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. ~~Accordingly, t~~The current accounting for these entities ~~in the GRE~~ is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and ~~has elected to~~ prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities to be reflected in the financial statements. Under the new policy, the IESO's financial statements do not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

Commented [LAP7]: To describe in more detail

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and ~~both~~ US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;
c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and
d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit, making the IESO a self-sustaining entity. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

Commented [LAP8]: CV - We need to deal with its ability to recover costs and not incur a lost re: the addition of the concept of self-sustaining.

Commented [npp9]: I had understood that the IESO was recovering for costs already incurred vs. pre-collecting.

Commented [LAP10R9]: Is it possible to have the IESO review this memo (or selected excerpts) to confirm accuracy?

Commented [npp11]: IESO earns revenue from outside parties (not within the e GRE except for OPG and then it is at commercial terms). The definition of a GBE does not require independence nor profit, but rather self-sustaining. In fact, a case might be made for the IESO to be accounted for as a GBE.

Commented [LAP12R11]: Based on our conversation, I have not expanded the memo to address whether it can be supported that the IESO is a GBE.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically ~~identified~~ labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically ~~identified~~ labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been ~~recorded~~ presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO~~, both on a standalone basis and subsequently on the Province's~~ and the consolidated financial statements ~~which are also prepared on a PSAS basis~~of the GRE.

When the standalone financial statements of the IESO are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust ~~at~~ by the end of the reporting period. The conclusion remains significant, however, due to its impact on the consolidated financial statements of the GRE, which is discussed in a later section.

Commented [LAP13]: Full excerpt from the IESO statements is as follows:

In addition, as of January 1, 2016, the IESO changed its accounting policy regarding the recognition of market accounts assets and liabilities on the statement of financial position. The change was made to better reflect the assets and liabilities and amounts due to and from market participants held by the IESO on behalf of the IAM at year end. This change has been applied retroactively and has increased amounts previously unrecorded for market accounts assets and liabilities. There is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Commented [npp14]: Could include reference that this same basis is used by OPG, H1 and many other rate regulated entities in Canada (including those which report based on IFRS14).

Commented [LAP15R14]: Should a section be added to document that not only is the basic PSAS definition of an asset met, the recognition of regulatory assets best meets the users' needs? If so, maybe that is the best place to refer to other entities that are also recognizing regulated assets.

Commented [LAP16]: To discuss.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Commented [NPP17]: Insert ref to GAAP hierarchy.

Commented [LAP18R17]: I haven't added the reference because this doesn't get addressed until (c) below.

Commented [npp19]: The OPA had also accounted for the balances as assets (consistency w.r.t. the CFS treatment).

OPA Accounting Treatment for Regula

Commented [LAP20R19]: To discuss.

Commented [NPP21]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Commented [LAP22R21]: Is a copy of this e-mail available?

~~The statement made by the OAG does not appear to be a fair reflection of the facts.~~ Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.*

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) ~~inherited~~ took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [NPP23]: Not sure what these are. Ask IESO?

Commented [LAP24R23]: Uplift charges are comprised of a number of things. Challenge is to summarize succinctly. Would it be possible to ask the IESO to help?

Commented [LAP25]: CV - I'm not sure that all of these costs have shifted –certainly the new aspect has – there was an RRRP program previously -- we will confirm with Energy

Commented [LAP26]: CV - To determine if there is anything else to add from IESO's analysis.

Also – to confirm whether we want to add any content re: the regulatory

Commented [LAP27]: CV - See previous comment – we will confirm with Energy whether all of the RRRP is transferred or just some of it.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be ~~directly~~ charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. ~~As with the other criteria, this will need to be continually evaluated throughout the recovery period.~~ This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

Commented [LAP28]: To add statute reference.

Commented [NPP29]: Navigant report/other support

Commented [LAP30R29]: Is a copy of this report available?

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [LAP31]: To determine if included as exhibit.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[2]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

[2] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

Commented [npp32]: Economic inflows will be generated through rates, not taxes. Not reflecting the RRA on the books of the government would distort the relevance of the financial reports of the Province.

Commented [LAP33R32]: As mentioned above, should a section be added to document that not only is the basic PSAS definition of an asset met, the recognition of regulatory assets best meets the users' needs?

b) the public sector entity can control the economic resource and access to the future economic benefits; and
c) the transaction or event giving rise to the public sector entity's control has already occurred.

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) no future economic benefit;
b) future economic benefit, but the government cannot obtain it; or
c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

Commented [npp34]: Similarly the Y2K report concluded that the RRA/Ls met the definitions of assets and liabilities.

Commented [LAP35R34]: I included this later on.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and

portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [LAP36]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29

Commented [LAP37]: More complete excerpt:

Ministry of Finance officials contend that rate-regulated assets and liabilities meet PSAB's standards without reference to any of the rate-regulated provisions in the CICA Handbook. We do not agree with this position. For example, PSAB 1000.36 sets out the three essential characteristics of a government asset:

- it embodies a future benefit that involves a capacity, singly or in combination with other assets, to provide future net cash flows, or to provide goods and services;
- the government can control access to the benefits; and
- the transaction or event giving rise to the government's control of the benefit has already occurred.

In our view, rate-regulated assets are suspect under the second characteristic and fail to meet the test of the third characteristic. With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's

Commented [npp38]: Similar position in Tory's letter.

Commented [LAP39R38]: Are you looking for a specific reference to the Tory's letter? I looked through it, but couldn't find a good excerpt to include in this memo.

position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past

event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

Commented [npp40]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

Commented [LAP41R40]: I agree ASC 980 is the basis for continuing recognition under IFRS 14, but I didn't think that comment fits into this paragraph. Let's discuss if you feel differently.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

The regulatory asset does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.

Commented [LAP42]: CV - To discuss – non financial assets are quite narrowly defined as well.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41-.42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets.

Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)

Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

V2.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: V2
Date: Monday, July 17, 2017 11:20:34
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V2 17-Jul-2017 .docx

V2 for review and discussion.

I had already updated the memo based on Nadine's comments and saved as V2 before receiving Cindy's comments. As a result, please note:

- All of Nadine's changes were accepted
- After accepting Nadine's changes, subsequent changes are blacklined
- Some of Cindy's review notes have been inserted under my name

Regards,

Lee Anne

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EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) ~~Fair Hydro Plan~~ component of the FHP on ~~the Province's~~ Ontario's consolidated financial ~~reports~~statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the ~~FHP model~~GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. ~~At this time, accounting standards, both domestically and internationally, continue to evolve.~~ This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

~~In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP).~~ The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 15-17% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.

Commented [LAP1]: This is my understanding after speaking to Jeannette, but it would be good to reconfirm.

Commented [LAP2]: To confirm/correct.

3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates~~, including interest and other costs from ratepayers~~ over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting ~~forecasting~~ process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to ~~allow for recovery of~~settle any such ~~differences~~ variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The ~~Independent Electricity System Operator (~~IESO~~)~~ is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, ~~both buyers and sellers, but it does not buy or sell electricity itself~~as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting

process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent ~~recovery from~~settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period, but over ~~the~~ a longer period defined by legislation.

Commented [LAP3]: Does the legislation define a specific period?

~~As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying (clean energy) electricity, however, is greater than the MCP. From a government policy perspective, it is understood that d~~Decisions ~~of what is in the public interest regarding electricity generation in Ontario are not based solely on economics, but rather they are also influenced by environmental, social and political factors, as well. When the costs associated with generation of a clean energy generator invests in~~are ~~a~~relatively~~are relatively less economic, facility, the excess costs (including a reasonable rate of return thereon) are currently being recovered from consumers and paid to generators over a the twenty year contract period (e.g. 20 years).~~

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a ~~longer~~ thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

~~Similar to the existing variance account which tracks the variance between price paid and recovered for the clean energy generation purchased by the IESO,~~ Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a ~~separate~~ variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

Commented [NPP4]: Confirm consistent with IESO analysis

The Province has requested that OPG administer the ~~GAC~~ deferral of the Global Adjustment under the FHP~~,~~ because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. To fulfill this role, OPG intends to establish a

Commented [LAP5]: To discuss.

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis~~, thus helping to~~ and eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Commented [LAP6]: Diagram to be added.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. ~~Accordingly, t~~The current accounting for these entities ~~in the GRE~~ is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and ~~has elected to~~ prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities to be reflected in the financial statements. Under the new policy, the IESO's financial statements do not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

Commented [LAP7]: To describe in more detail

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and ~~both~~ US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;
c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and
d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit, making the IESO a self-sustaining entity. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

Commented [LAP8]: CV - We need to deal with its ability to recover costs and not incur a lost re: the addition of the concept of self-sustaining.

Commented [npp9]: I had understood that the IESO was recovering for costs already incurred vs. pre-collecting.

Commented [LAP10R9]: Is it possible to have the IESO review this memo (or selected excerpts) to confirm accuracy?

Commented [npp11]: IESO earns revenue from outside parties (not within the e GRE except for OPG and then it is at commercial terms). The definition of a GBE does not require independence nor profit, but rather self-sustaining. In fact, a case might be made for the IESO to be accounted for as a GBE.

Commented [LAP12R11]: Based on our conversation, I have not expanded the memo to address whether it can be supported that the IESO is a GBE.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically ~~identified~~ labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically ~~identified~~ labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been ~~recorded~~ presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO~~, both on a standalone basis and subsequently on the Province's~~ and the consolidated financial statements ~~which are also prepared on a PSAS basis~~of the GRE.

When the standalone financial statements of the IESO are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust ~~at~~ by the end of the reporting period. The conclusion remains significant, however, due to its impact on the consolidated financial statements of the GRE, which is discussed in a later section.

Commented [LAP13]: Full excerpt from the IESO statements is as follows:

In addition, as of January 1, 2016, the IESO changed its accounting policy regarding the recognition of market accounts assets and liabilities on the statement of financial position. The change was made to better reflect the assets and liabilities and amounts due to and from market participants held by the IESO on behalf of the IAM at year end. This change has been applied retroactively and has increased amounts previously unrecorded for market accounts assets and liabilities. There is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Commented [npp14]: Could include reference that this same basis is used by OPG, H1 and many other rate regulated entities in Canada (including those which report based on IFRS14).

Commented [LAP15R14]: Should a section be added to document that not only is the basic PSAS definition of an asset met, the recognition of regulatory assets best meets the users' needs? If so, maybe that is the best place to refer to other entities that are also recognizing regulated assets.

Commented [LAP16]: To discuss.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Commented [NPP17]: Insert ref to GAAP hierarchy.

Commented [LAP18R17]: I haven't added the reference because this doesn't get addressed until (c) below.

Commented [npp19]: The OPA had also accounted for the balances as assets (consistency w.r.t. the CFS treatment).

OPA Accounting Treatment for Regula

Commented [LAP20R19]: To discuss.

Commented [NPP21]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Commented [LAP22R21]: Is a copy of this e-mail available?

~~The statement made by the OAG does not appear to be a fair reflection of the facts.~~ Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.*

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) ~~inherited~~ took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [NPP23]: Not sure what these are. Ask IESO?

Commented [LAP24R23]: Uplift charges are comprised of a number of things. Challenge is to summarize succinctly. Would it be possible to ask the IESO to help?

Commented [LAP25]: CV - I'm not sure that all of these costs have shifted –certainly the new aspect has – there was an RRRP program previously -- we will confirm with Energy

Commented [LAP26]: CV - To determine if there is anything else to add from IESO's analysis.

Also – to confirm whether we want to add any content re: the regulatory

Commented [LAP27]: CV - See previous comment – we will confirm with Energy whether all of the RRRP is transferred or just some of it.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with XX.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be ~~directly~~ charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. ~~As with the other criteria, this will need to be continually evaluated throughout the recovery period.~~ This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

Commented [LAP28]: To add statute reference.

Commented [NPP29]: Navigant report/other support

Commented [LAP30R29]: Is a copy of this report available?

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [LAP31]: To determine if included as exhibit.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[2]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

[2] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

Commented [npp32]: Economic inflows will be generated through rates, not taxes. Not reflecting the RRA on the books of the government would distort the relevance of the financial reports of the Province.

Commented [LAP33R32]: As mentioned above, should a section be added to document that not only is the basic PSAS definition of an asset met, the recognition of regulatory assets best meets the users' needs?

b) the public sector entity can control the economic resource and access to the future economic benefits; and
c) the transaction or event giving rise to the public sector entity's control has already occurred.

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) no future economic benefit;
b) future economic benefit, but the government cannot obtain it; or
c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

Commented [npp34]: Similarly the Y2K report concluded that the RRA/Ls met the definitions of assets and liabilities.

Commented [LAP35R34]: I included this later on.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and

portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [LAP36]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29

Commented [LAP37]: More complete excerpt:

Ministry of Finance officials contend that rate-regulated assets and liabilities meet PSAB's standards without reference to any of the rate-regulated provisions in the CICA Handbook. We do not agree with this position. For example, PSAB 1000.36 sets out the three essential characteristics of a government asset:

- it embodies a future benefit that involves a capacity, singly or in combination with other assets, to provide future net cash flows, or to provide goods and services;
- the government can control access to the benefits; and
- the transaction or event giving rise to the government's control of the benefit has already occurred.

In our view, rate-regulated assets are suspect under the second characteristic and fail to meet the test of the third characteristic. With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's

Commented [npp38]: Similar position in Tory's letter.

Commented [LAP39R38]: Are you looking for a specific reference to the Tory's letter? I looked through it, but couldn't find a good excerpt to include in this memo.

position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past

event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

Commented [npp40]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

Commented [LAP41R40]: I agree ASC 980 is the basis for continuing recognition under IFRS 14, but I didn't think that comment fits into this paragraph. Let's discuss if you feel differently.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

The regulatory asset does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.

Commented [LAP42]: CV - To discuss – non financial assets are quite narrowly defined as well.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41-.42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets.

Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)

Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

V3.rtf

From: Blake Langill [blake.w.langill@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: V3
Date: Friday, July 21, 2017 08:47:46
Attachment 1: image001.gif
Attachment 2: FHP Memo - Draft V3 21-Jul-2017 .docx

Cindy & Nadine,

Attached is the latest draft from late yesterday based on Monday's call; Suzie and I have not had a chance to review but wanted it in your hands as a just in case when Lee Anne talks through what she's done and the areas she's still thinking about and/or is looking for your thoughts – she'll cover that on this morning's call.

Both Suzie and Lee Anne will be joining too but from calling from cars.

Talk soon.

-blake

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EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for ~~15~~18-~~17~~19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including

interest and other costs, will be recoverable from ratepayers through future rates over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the impact of the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In

accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period~~, but over a longer period defined by legislation~~.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a thirty year period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires the IESO to establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market, the regulatory knowledge OPG possesses and the ~~potential~~ expected ability to consolidate the accounting of the related activity ~~and accounting with~~ in the financial statements of OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis and eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

This memo does not reconsider the classification of these existing entities.

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. ~~Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.~~

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO's statement of operations and accumulated surplus ~~financial statements~~ does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;

[2] The IESO itself does not buy or sell electricity. It administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit~~, making the IESO a self-sustaining entity~~. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to ~~When~~ the standalone financial statements of the IESO ~~are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust by the end of the reporting period. The conclusion remains significant, however, due to its~~may impact ~~on~~ the consolidated financial statements of the GRE~~, which is discussed in a later section~~.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Commented [NPP1]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Commented [LAP2]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [LAP3]: To confirm with Energy if all costs have shifted.

Commented [LAP4]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP5]: To confirm with Energy if all costs have shifted.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with ~~XX~~OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP6]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in

the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and

portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

Commented [LAP7]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

.31 *When conditions indicate that a tangible capital asset no longer contributes to a government's ability to provide goods and services, or that the value*

.07 *When there has been a loss in value of a portfolio investment that is other than a temporary decline, the investment should be written down to recognize the loss. The write-down should be included in the statement of operations. In the case of an item in the fair value category, a reversal of any net remeasurements should be reported in the statement of remeasurement gains and losses.*

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29

The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

In April 2011, Torys LLP issued a letter to OPG relating to the legal basis of OPG's regulatory deferral and variance accounts which, as evidenced by the following excerpts, also takes the position that the transaction or event giving rise to the asset is the incurrence of costs for which recovery is provided for under statute:

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to

have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated

enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

Commented [npp8]: And where reporting under IFRS14, ASC980 continues to be the basis for reporting such assets.

Commented [LAP9R8]: To discuss

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*

h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

a) are normally employed to deliver government services;
b) may be consumed in the normal course of operations; and
c) are not for sale in the normal course of operations.

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets. Consistent with these other regulated assets, ~~The~~ the regulatory asset created under the FHP meets the definition of a financial asset in PSAS 1000.39 since it will be available to discharge existing liabilities or finance future operations. Although the regulatory asset is not available to discharge liabilities existing at the date of the statement of financial position, that is no different than, for example, accounts receivable. ~~does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.~~

~~Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41 .42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.~~

By recognizing the regulatory asset as a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which is consistent with the guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) the government's ability to finance its activities and to meet its liabilities and contractual obligations; and
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized as a financial asset, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-

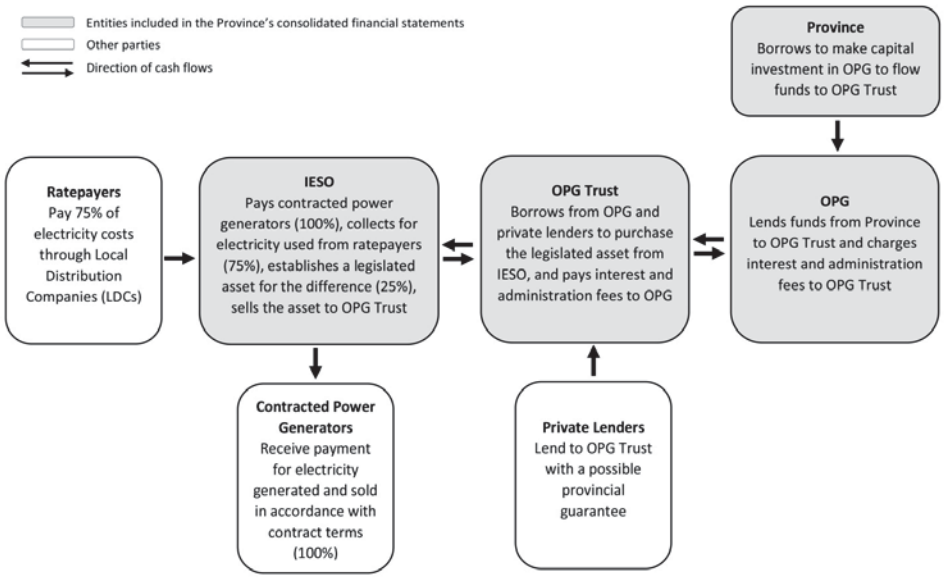
regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			Scenario B – Not a Regulated Asset		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

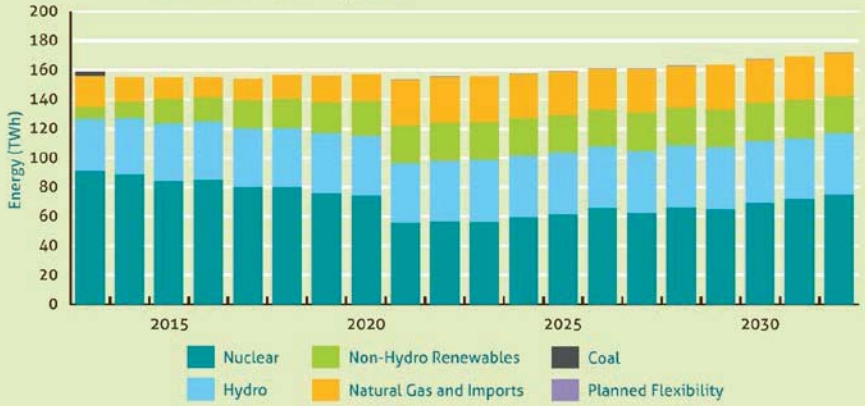
APPENDIX A

Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

V5.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]
Subject: V5
Date: Thursday, August 17, 2017 11:56:26
Attachment 1: FHP Memo - Draft V5 17-Aug-2017.docx

Hi Cindy,

Attached is V5 for your review.

Please note that I tried to remove review notes that were only comments and not action items.

The two primary outstanding sections are (a) accounting by OPG Trust, and (b) consolidation issues. Although the section on the accounting by OPG Trust will chronologically come first in the memo, my next step is to draft the consolidation section. I can outline my rationale for that on our call tomorrow.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

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FHP Memo - Draft V5 17-Aug-2017.pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and for decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting ~~opinions~~ views of their external accounting advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 18-19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a ~~thirty year~~longer period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires that IESO establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market and~~,~~ the regulatory knowledge OPG possesses ~~and the expected ability to consolidate the accounting of the related activity in the financial statements of OPG~~. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) ~~which would have a choice~~ to purchase the IESO's regulatory asset on a monthly basis ~~which would~~and eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC. ~~Nonetheless,~~ US GAAP to IFRS adjustments are made for the purposes of preparing the consolidated provincial accounts.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance ~~for its general purpose financial statements~~.

This memo does not reconsider the classification of these existing entities (i.e., such classifications are based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that under IFRS it will be considered to control OPG Trust. As such, ~~If this is the case,~~ OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. ~~If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.~~

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS based on an assessment of its user needs, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. ~~Under PSAS, the entity has selected to apply PSAB accounting standards to meet its user needs.~~

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO statement of operations and accumulated surplus does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

- *a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;*
- *b) the entity has inventory risk before or after the customer order, during shipping or on return;*
- *c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and*

[2] The IESO itself does not buy or sell electricity. It administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules. This treatment is consistent with the conclusion that the IESO is acting as an agent in the market-settlement process.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS may impact the consolidated financial statements of the GRE.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Commented [LAP1]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO~~'s~~ invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [LAP2]: To confirm with Energy if all costs have shifted.

Commented [LAP3]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP4]: To confirm with Energy if all costs have shifted.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [LAP5]: Consider Navigant report if/when becomes available

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in

the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Commented [LAP6]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

The IESO is considered an agent in the market-settlement process and, therefore, recognizes revenue on a net basis. Although this conclusion impacts whether the recovery of costs through rates are presented as revenue in the financial statements of the IESO, it is not considered to preclude these amounts from being considered 'future revenue' for purposes of assessing the criteria in ASC 980-340-25-1. In fact, the capitalization of the incurred costs in the FHP variance account preserves the treatment of the IESO as

an agent (i.e., if these costs are not capitalized, it results the recognition of costs in the period incurred and the recognition of revenue in a subsequent period when electricity is consumed, which, in effect, is gross presentation). To put another way, not capitalizing the costs in FHP variance account treats the IESO as a principal in the transaction by showing costs and revenue.

Is ASC 980 an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1 (i.e., silence under PSAS on this specific topic does not, on its own, mean that such guidance is to be ignored). However, PSAS 1000.05 makes it clear that in order to do so, it must first be

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) *they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;*
b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The guidance on forgivable loans in PSAS 3050, Loans receivable, provides an example where an asset can be recognized under PSAS based on the existence of sufficient evidence of a reasonable expectation of its recovery.

Commented [OPCD7]: See comment on OPCD 19

Commented [LAP8R7]: I'm not sure what OPCD 19 is referring to

Commented [LAP9]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

Also need to consider whether a different conclusion is reached on consolidation

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

- *(a) the balance in the variance account shall be reduced by the amount of the payment;*
- *(b) the regulatory asset shall be adjusted accordingly;*
- *(c) the financing entity shall acquire a corresponding investment interest; and*
- *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

Commented [LAP10]: Once terms of guarantee are finalized, need to consider if it impacts this discussion. Impact may not be at IESO level, but on consolidation.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro ~~can~~ may be relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the

regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets.

Although the regulatory asset created under the FHP does not clearly meet the definition of either a financial asset or a non-financial asset under PSAS, ~~Consistent with these other regulated assets, the regulatory asset created under the FHP meets the definition~~ it possesses characteristics more consistent with that of a financial asset ~~in PSAS 1000.39~~ since it will be available to discharge existing liabilities or finance future operations and is not for consumption in the normal course of operations.

The FHP is expected to be executed in a manner such that the regulatory asset will be available to discharge existing liabilities or finance future operations in the short term through its commoditization (i.e., transfer to the OPG Trust). However, even if not commoditized, the regulatory asset will ~~Although the regulatory asset is not~~be available to discharge existing liabilities or finance future operations in the future similar to, for example, a long-term receivable. ~~existing at the date of the statement of financial position, that is no different than, for example, a long-term accounts receivable.~~

By recognizing the regulatory asset ~~as a~~in a manner consistent with that of a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which appears appropriate and aligned ~~-~~with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) *the government's ability to finance its activities and to meet its liabilities and contractual obligations; and*
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized ~~as~~ in a manner consistent with that of a financial asset by the GRE, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Commented [LAP11]: Consider need to specifically address PS 3450.

Commented [LAP12]: Consider if Balanced Budget Legislation should be addressed

Additionally, while an increase in net debt and/or accumulated deficit in the financial statements of the GRE would be an indicator the Province's financial position has deteriorated in accordance with PSAS 1200.036, the FHP is designed to, in substance, have a neutral impact on the Province's financial position.

Sale of the Regulatory Asset [NTD – Need to consider impact of guarantee when finalized, but may only impact at consolidated level if IESO not a party to guarantee]

As discussed above, IESO management has concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with the guidance in ASC 980.

Since the IESO does not have the financial capability to finance the regulatory asset, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis to eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

The sale of the regulatory asset to OPG Trust is permitted under Section 26 of the FHP Act:

> *26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.*
>
> *Agreement*
>
> *(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.*
>
> *Effect of payment*
>
> *(3) Upon receipt by the IESO of the payment by the financing entity,*
>
> *(a) the balance in the variance account shall be reduced by the amount of the payment;*
>
> *(b) the regulatory asset shall be adjusted accordingly;*
>
> *(c) the financing entity shall acquire a corresponding investment interest; and*
>
> *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Consideration needs to be made as to whether the sale of the regulatory asset is accounted for as a sale transaction or a financing transaction. If treated as a sale transaction, the existing regulated asset is derecognized (DR Expense, CR Regulated Asset) and the cash received is recognized as sales proceeds (DR Cash, CR Revenue). Since the cash proceeds received are equal to the book value of the regulated asset, there is no net impact to income. If treated as a financing transaction, the existing regulated asset continues to be recognized and the cash proceeds received are treated as a loan (DR Cash, CR Payable).

IESO management has concluded the sale of the regulatory asset to OPG Trust will result in the derecognition of the regulated asset (i.e., sale transaction). The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from the KPMG Letter:

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

PSAS provides little guidance relating to the derecognition of an asset. In particular, PSAS 1000, *Financial statement concepts*, PSAS 3210, *Assets*, and PSAS 3450, *Financial instruments*, are all silent on

the topic. Although the transfer of the regulatory asset is not within the scope of PSAS 3430, *Restructuring Transactions*, the following derecognition guidance in this standard provides some relevant insight:

.21 Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.

.24 When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:

(a) derecognition of the asset and liability transferred would be appropriate; and
(b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.

.25 A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients.

The IESO should derecognize the regulated asset when transferred to OPG Trust if it no longer meets the definition of an asset in PSAS 1000.35-.36. However, consideration should also be made as to whether the IESO has any continued involvement in the regulatory asset that would result in the recognition of a new asset and/or a new liability (i.e. financing transaction).

The following supports the IESO's position that subsequent to the transfer to OPG Trust, the regulatory asset no longer possesses the three essential characteristics of an asset in PSAS 1000.36 and, therefore, should be derecognized:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The future economic benefits embodied in the regulated asset are realized by the IESO through the transfer of the regulatory asset to OPG Trust in exchange for cash. As noted above, under Section 26(2)(d) of the FHP, the IESO retains no further right, title or interest in the regulatory asset transferred to OPG Trust. Accordingly, there is no remaining future economic benefit to the IESO.
The public sector entity can control the economic resource and access to the future economic benefits
Although the IESO will collect funds on behalf of OPG Trust, the following sections of the FHP support that control of and access to the future economic benefits of the regulatory asset pass to OPG Trust: *Section 16 - IESO to receive amounts* *2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.*

4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Section 29 - Irrevocable rights and interests

1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.

2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.

The transaction or event giving rise to the public sector entity's control has already occurred

Not applicable as IESO does not control.

As previously noted, the IESO relinquishes its rights, title and interest in the regulatory asset upon transfer to OPG Trust. Subsequent to the transfer, the IESO's only continuing involvement is to act as agent of OPG Trust, which involves receiving funds and holding them in trust on behalf of OPG Trust. This level of continuing involvement does not result in the recognition of a new asset and/or a new liability by the IESO. Accordingly, it is appropriate to account for the transfer of the regulatory asset as a sale and derecognize the regulated asset.

Derecognition of the regulated asset is also consistent with ASC 980. ASC 980-340-40-1 provides the following guidance on the derecognition of an asset that has been recognized in accordance with ASC 980-340-25-1:

If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings.

In order for an incurred cost to be capitalized, ASC 980-340-25-1(a) requires the following:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

The capitalization criterion in ASC 980-340-25-1(a) is no longer met after the regulatory asset is transferred to OPG Trust because there are no future cash inflows that benefit the IESO. As mentioned above, the IESO realized the economic benefits associated with the regulatory asset upon the transfer. In accordance with Section 16 of the FHP, any future cash collected by the IESO is on behalf of OPG Trust.

~~.....~~

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS are set out in Scenario A in the table below. For comparison purposes, Scenario B in the table below sets out the accounting if it is determined ~~, depends on whether~~ the regulatory asset is not eligible for recognition as an asset ~~for accounting purposes~~ under PSAS. ~~To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:~~

Scenario A – Regulated Asset			Scenario B – Not a Regulated Asset		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Revenue	(100)	CR	Gain	(100)
DR	Expense	100			
CR	Asset	(100)	~~CR~~	~~Gain~~	~~(100)~~

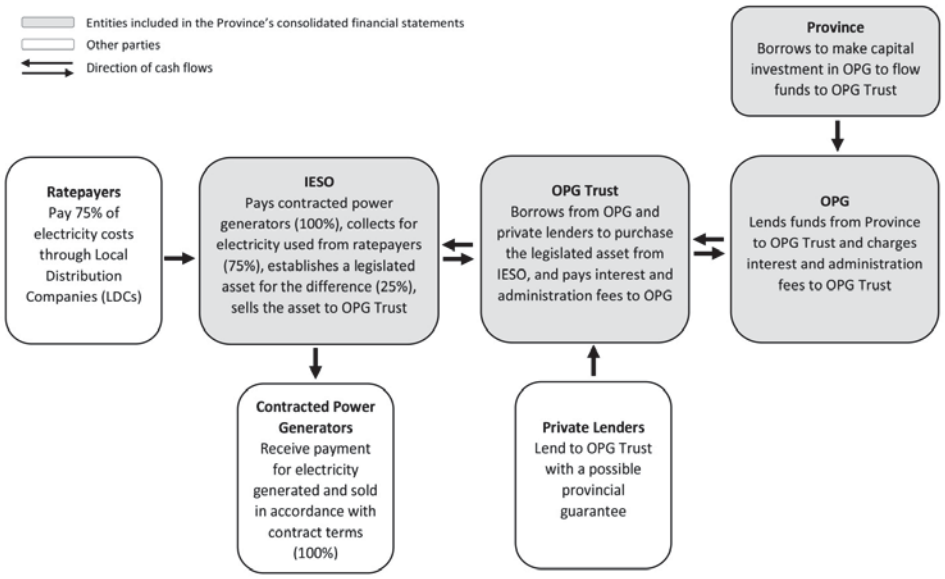
Commented [OPCD13]: Consider inserting 2 additional lines for impact on net debt and impact on annual surplus/deficit? If not sold by the end of the year, will have a loss on the IESO f/s and the province's f/s.

Commented [LAP14R13]: Maybe better to do once we add the consolidation section which would reverse the gain.

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

APPENDIX A

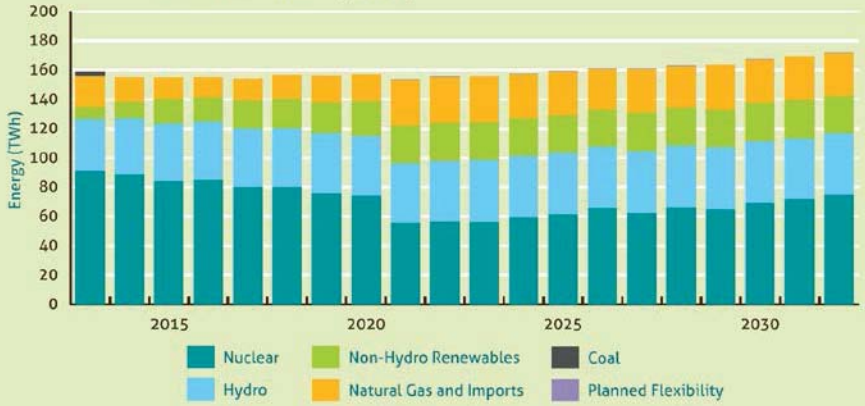
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD15]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

Vendor Names.rtf

From: Stretovitch, Ana (TBS) []
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: Vendor Names
Date: Wednesday, June 21, 2017 09:33:16

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From: Picard, Michel [mpicard@kpmg.ca]
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CC: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: Version #8
Date: Thursday, February 23, 2017 18:41:37
Attachment 1: IESO white papers draft #8.docx

All,

Please find enclosed the version #8 of the white papers.

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IESO white papers draft #8.pdf

WHITE PAPERS – WORKING DRAFT #7

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPG Trust**?**

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. The IESO is required to submit its proposed expenditures, revenue requirements and fees yearly to the OEB for review and approval.
3. IESO is rate regulated by the OEB in accordance with the *Electricity Act, 1998* and the *Ontario Energy Board ("OEB") Act, 1998* but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix B). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.
9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

This document is strictly confidential and intended solely for the information and use of the Board of Directors and management of the Company and the Comptroller of the Province, and is not intended to be and should not be used, circulated, quoted, or otherwise referred to by anyone other than these specified parties or for any other purpose.

Appropriate Accounting Principle for issue #1

PSAS requires

PS2120.02, "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government."*

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*"

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "*Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."*

PS3210.04 "Assets have three essential characteristics:

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(a) *They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.*

(b) *The public sector entity can control the economic resource and access to the future economic benefits.*

(c) *The transaction or event giving rise to the public sector entity's control has already occurred."*

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. Rate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers. The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. Currently, the IESO has received a rate order to recover the Smart Metering Charge over a period from May 1, 2013 to October 31, 2018. The initial costs related to the smart meter program amounting to $ _____ million has been expensed and is included in the accumulated deficit, as the IESO did not recognize a regulatory asset.

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities, however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities that prepare their general purpose financial statements in accordance with ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration

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of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the criteria under ASC 980 of a regulatory liability, as the OEFC has no further obligation and should have reversed the liability into income.

In summary

Rate regulated entities in North America reporting under ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix A for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
   - *(a) Source deals with the specific circumstance*
   - *(b) Source is issued by an accounting standard setter*
   - *(c) Source continues to be relevant*
   - *(d) Source uses a consultative process and deliberation when developing policies*

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational	Similar

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performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

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(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether the deferral of the Global Adjustment account meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement*

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		contract, as determined under the procurement contract."
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not

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recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50

"The International Financial Reporting Interpretations Committee observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP"*. FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*

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- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."
- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*
- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy	Met

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products.	purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	
In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

DRAFT

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 "*Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 "*Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not.*"

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.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."*

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 "*Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 *"If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;

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- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the reception of cash from the OPG Trust.

DRAFT

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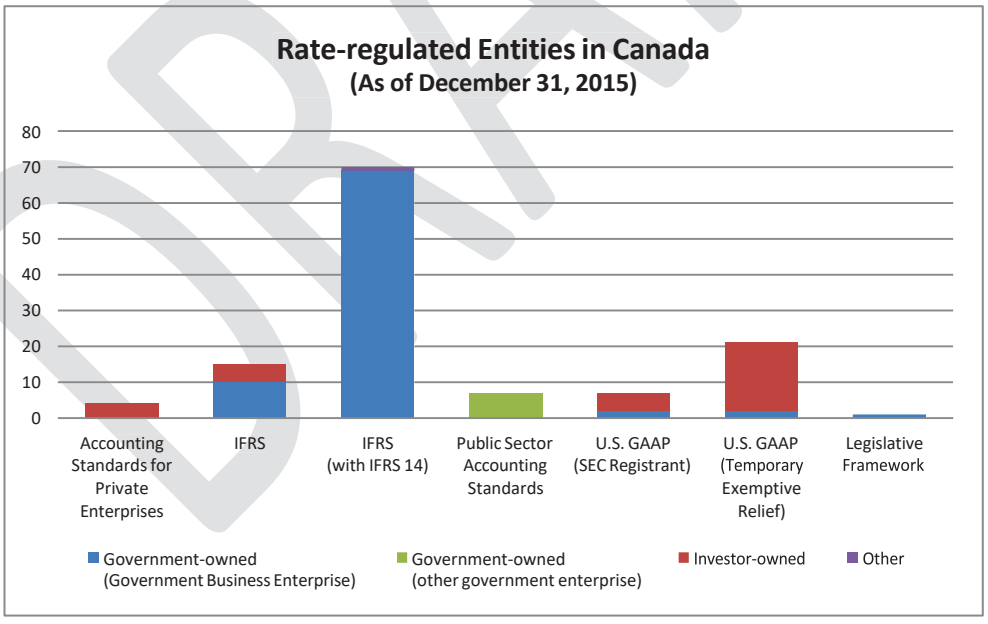
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

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20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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Appendix B:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

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Version 6.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Kim Marshall [Kim.Marshall@ieso.ca]
Subject: Version 6
Date: Thursday, February 23, 2017 06:27:56
Attachment 1: IESO white papers draft #6.docx

Ladies,

Please find enclosed the amended version to take into account your comments of yesterday.

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IESO white papers draft #6.pdf

WHITE PAPERS – WORKING DRAFT #6

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account**?**

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. The IESO is required to submit its proposed expenditures, revenue requirements and fees yearly to the OEB for review and approval.
3. IESO is rate regulated by the OEB in accordance with the *Electricity Act, 1998* and the *Ontario Energy Board ("OEB") Act, 1998* but currently does not recognize the economic impacts of rate regulation.
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix B).
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract.
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* will be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
8. The OEB will grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction will also be included in future rates charged to customers. In summary, the legislation will create a right to collect the incurred cost.
9. IESO will change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO will adopt the guidance of ASC 980 *Regulated Operations*.

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Appropriate Accounting Principle for issue #1

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances*."

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "*Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."*

PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

(c) The transaction or event giving rise to the public sector entity's control has already occurred."

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Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities, however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities that prepare their general purpose financial statements in accordance with ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the criteria under ASC 980.

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In summary

Rate regulated entities in North America reporting under ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix A for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
    - *(a) Source deals with the specific circumstance*
    - *(b) Source is issued by an accounting standard setter*
    - *(c) Source continues to be relevant*
    - *(d) Source uses a consultative process and deliberation when developing policies*

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets (Concept #6.25-.34)		

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Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events.	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities (Concept #6.35-.43)		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events.	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues (Concept #6.78-.79)		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations.	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses (Concept # 6.80-.81)		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations.	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB

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Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether a deferral or variance accounts meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

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Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it*

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		under this section." The legislation will be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50

"The IFRIC observed that it had previously discussed whether a regulatory asset should be recognised in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognise only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP"*. FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets.

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Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*

- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*

- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*

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– 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB will grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction will also be included in future rates charged to customers. In summary, the legislation will create a right to collect the incurred costs.	Met
In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts will be sold to the OPG Trust at least on a monthly basis and cash will be received on the same day, this criteria will be met. This criteria will need to be monitored on a yearly basis to ensure that IESO and the OPG Trust will be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met

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Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs will be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that will be deferred in the deferral or variance accounts (the "Asset") will be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust will be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract will be structured as an absolute sale, which will assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement will be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO will have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO will not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract will be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO will continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO will not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract will define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, will be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset will be sold to the OPG Trust at least, on a monthly basis and cash will be received on the same day.

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 "Assets have three essential characteristics:

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 "Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."

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.24 "A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

".37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account?

PS3210 does not specifically address the derecognition of a regulatory asset. The concept of a regulatory asset does not exist under PSAS.

It is also well understood in this industry that regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, ALL risks and rewards will be transferred to the OPG Trust including the following:

- the contract will define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset will be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset will be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO will derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust.

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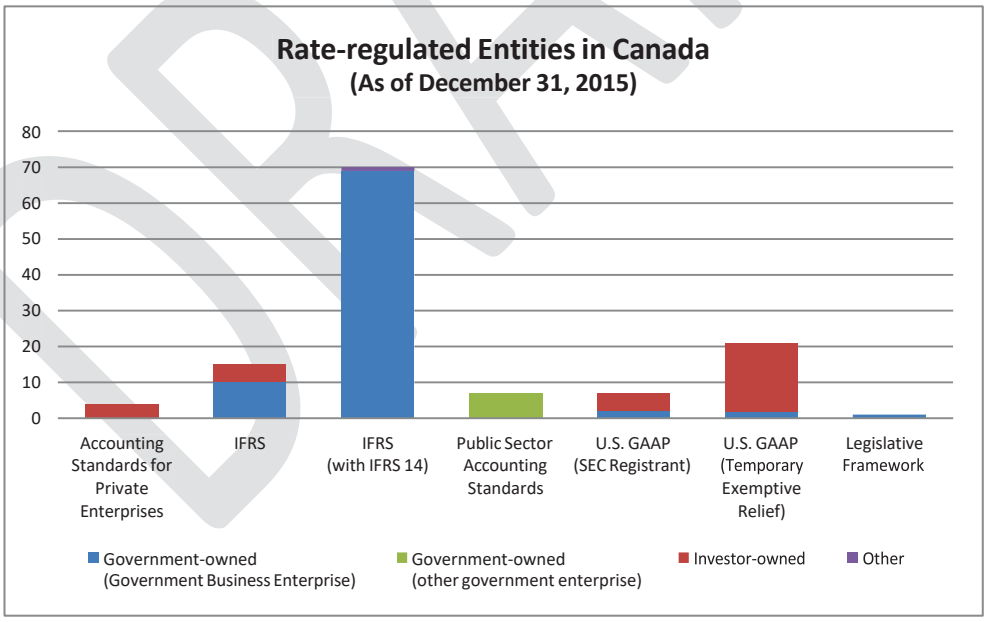
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

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20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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Appendix B:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

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Version 7.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Version 7
Date: Thursday, February 23, 2017 10:12:13
Attachment 1: IESO white papers draft #7.docx

Cindy,

I enclosed draft #7 that reflects comments received from Nadine.

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IESO white papers draft #7.pdf

WHITE PAPERS – WORKING DRAFT #7

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the Company believes that the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issues being considered in this document are:

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account**?**

1. Adoption of the guidance in ASC 980 Regulated Operations

Background and Assumptions for issues #1 and #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. The IESO is required to submit its proposed expenditures, revenue requirements and fees yearly to the OEB for review and approval.
3. IESO is rate regulated by the OEB in accordance with the *Electricity Act, 1998* and the *Ontario Energy Board ("OEB") Act, 1998* but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix B). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment account and the future recovery in rates charged to customers.
8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.
9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

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Appropriate Accounting Principle for issue #1

PSAS requires

PS2120.02, "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government."*

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*"

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "*Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."*

PS3210.04 "Assets have three essential characteristics:

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(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

(c) The transaction or event giving rise to the public sector entity's control has already occurred."

Issue #1: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities, however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities that prepare their general purpose financial statements in accordance with ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC") recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the

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liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the criteria under ASC 980.

In summary

Rate regulated entities in North America reporting under ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix A for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
    - *(a) Source deals with the specific circumstance*
    - *(b) Source is issued by an accounting standard setter*
    - *(c) Source continues to be relevant*
    - *(d) Source uses a consultative process and deliberation when developing policies*

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

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(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets (Concept #6.25-.34)		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events.	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities (Concept #6.35-.43)		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events.	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues (Concept #6.78-.79)		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations.	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses (Concept # 6.80-.81)		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations.	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

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Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether a deferral of the Global Adjustment account meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits

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	future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50

"The IFRIC observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an

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expectation that the entity will recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP"*. FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appropriate Accounting Principle for issue #2

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

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A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*
- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them."*
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period."*
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants."*

Issue #2: Can the IESO recognize deferral or variance accounts related to the deferral of the annual Global Adjustment account as a regulatory asset on its statement of financial position?

As described in issue #1, US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation. The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix B). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation	Met

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	would create a right to collect the incurred costs.	
In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: Since the three criteria are met, IESO should be able to adopt the guidance in ASC 980.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

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2. Derecognition of the regulatory assets

Background and Assumptions for issue #3

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #3

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 "Assets have three essential characteristics:

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 "Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not."

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.24 "A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

".37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

Issue #3: Can the IESO derecognize the variance accounts related to the deferral of the annual Global Adjustment account upon sale to OPGTrust?

PS3210 does not specifically address the derecognition of a regulatory asset. The concept of a regulatory asset does not exist under PSAS.

It is also well understood in this industry that regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, ALL risks and rewards would be transferred to the OPG Trust including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the reception of cash from the OPG Trust.

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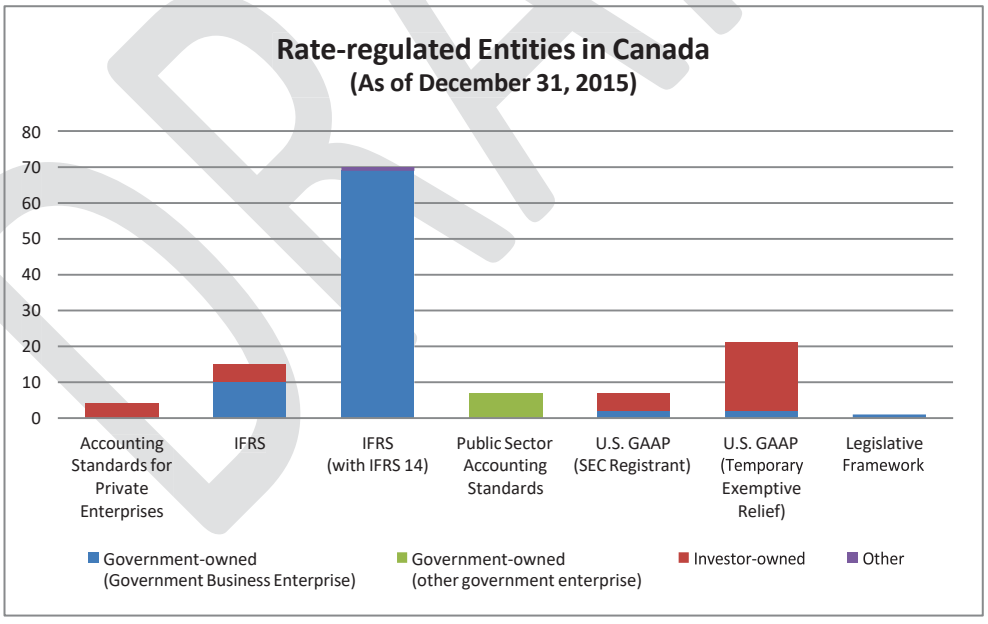
Appendix A:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

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20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

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Appendix B:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

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year end.rtf

From: Virani, Shyrose (TBS) []
To: suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]
Subject: year end
Date: Monday, March 12, 2018 09:02:25

Hi Suzie:

As March is our fiscal year end, we would appreciate receiving invoice for the month of March if any. Please let me know.

Thanks

Shyrose

p.s. I did receive invoice for February.

year end.rtf

From: Virani, Shyrose (TBS) []
To: suzie.r.gignac@ca.ey.com [suzie.r.gignac@ca.ey.com]
Subject: year end
Date: Friday, February 23, 2018 16:03:34

Hi Suzie:

We are approaching towards our year-end and we have to provide our budget and forecast. Could you please let me know if there are any forthcoming invoices that I will be receiving from you for February and March?

Thanks
Shyrose

From: Petsche, Nadine (TBS)
Sent: March 18, 2017 8:33 PM
To: Picard, Michel (mpicard@kpmg.ca)
Subject: Your feedback please (specific control related considerations on Affordability Fund)

Importance: High

Michel,

Thanks again for taking time today to participate in the call with Blakes and MOE. It was a good discussion that helped to clarify some of the key aspects of the arrangements and to provide Blakes with additional considerations for their rework this evening. As we await the revised draft, I've been pondering the PSAS control criteria and wondered if you could provide your thoughts on a few items (see below). If any of these are issues, there may be an opportunity to advise Stephen for consideration as he edits the docs. Thanks in advance. Nadine

1. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original non-controlled Trustee (Computershare) establishes Trust and remains the governing body of the organization until the subsequent Board of Trustees is selected. Question – in the event that the Trustee resigns, is OK for the province to appoint a replacement, or should the Advisory Committee do so? • An Advisory Board (to be established by March 31st), would operate independent of government, but would have government representation (TBD). Seven members (TBD) to include limited government representation (IESO, OEB, H1), and 4 others from LDCs. The government will not have control to unilaterally appoint or remove a majority of members of the Advisory Board since it will only have 3 representatives. If any member is unable to act, the remaining members will appoint a replacement (per Trustee Replacement Annex). Question – If government will have 3 of 7 reps, would it be advisable to restrict one of them being the Chair? • Government representation on the subsequent Board of Trustees will be limited to (can't recall exactly) 2 of 7 members/ 1 non-voting government rep, with the remaining 5 members being from LDCs and social services agencies. Question: Please confirm that it is ok to have provincial appointments as long as not controlling interest.
7. Establish or amend the mission or mandate of the organization	Question: This is likely a control indicator as the province is establishing the Trust and flowing initial funds with an anticipated end date, even though the trust will be non-controlled (i.e. A trust under administration).
9. Establish borrowing or investment limits or restrict the organization's investments	Question: We heard on the call today that the Trust Declaration/TPA will restrict the nature of investments that should be maintained by the Trust (risk free certificates). However, it does not address borrowing or investment limits which the Trust would not normally be subject to as it is not an operation. Does this indicator reflect control?
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	Trust Declaration will contain some guidance but Trustee(s) will have ultimate discretion and will be able to suggest modification subject to agreement by the Province (this is what I heard on the call). Question: Would agreement by the province be a control indicator then. Perhaps if we said that the Province could not unreasonably withhold its approval? Also, the Trust Declaration restricts the ability for the Trust to distribute funds to any beneficiary until replacement trustees are identified to replace Computershare and to make decisions regarding governance of the Trust. Question: If the replacement Trustees have not been identified by March 31st, could the AG conclude that the funds are controlled? Perhaps we should word this as an eligibility criteria (i.e. that the beneficiaries will not be eligible for the funds until the Trustees have made their decisions?) Question: Although there is no intent that the government would control the Advisory Committee or the Trustee Board, please confirm whether you think that there is a potential control issue associated with the current scope and wording related to the Advisory Board and/or Trustee selection process (for replacing Computershare).

Your thoughts please (before 9_30).rtf

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Subject: Your thoughts please (before 9:30)
Date: Monday, March 20, 2017 06:41:02

Michel,
As noted in my preliminary analysis. There is a risk that the Trust could be considered controlled as at March 31 and the expense note reported in 16/17 due primarily ro the restriction on trustee actions on paying money to beneficiaries until certain administrative details are addressed and the replacement Board of Trustees put in place.

Under PSAB standards, there wouldn't be a requirement to have a signed TPA in place or to flow the funds in order to achieve expense recognition. These actions have been pursued in order to try to try to ensure expense recognition, even though flowing the funds earlier cold raise some additional comunications risks.

Reflecting again on PSAB's requirements for expense recognition for government transfers (that government has made a commitment with little or no discretion to avoid, which can be reasonably estimated and which is uthorized), I might suggest an alternative path to the MOE, taking the more recent correspondence bwtween OPCD amd the OAG on One-Time transfers:

- That a valid Trust be established before Mar 31 (still need to address some remaining "control' perception risks in the Declaration (need your input)
-That the government, based on details developed to date on AFT, make a sufficiently detailed announcement of the government's commitment to flow the funds to the established trust (based on the 100 only), once administrative details have been worked out, but prior to June (which is the date that we have been generally using with the OAG_
- by June, one could reasonably assume that the requirements that would otherwise have been imposed on the Trust before flowing funds might have been accomplished (MOE to confirm)
- this would also give more time to put the AC and Trustees in place without unnecessarily rushing the schedule which appears to be becoming unnecessarily challenging as we attempt to address all of the control related aspects of the docs.

Your thoughts please (preferably prior to the 9:30 call).
Thanks!
N